RECEIVED
JUL 18 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 83-5072

in the

SUPREME COURT OF THE UNITED STATES

October Term, 1982

OSCAR E. WEIGANG, JR.,

Appellant,

v.

PAUL SILVERMAN, et al.,

Appellees

On Appeal
from the
Supreme Judicial Court of the State of Maine

JURISDICTIONAL STATEMENT

Oscar E. Weigang, Jr.
168 Aster Road, A.O.
Macungie, Pennsylvania
18062
(215) 398-3613

Pro Se

QUESTIONS PRESENTED

1. Is procedural rule, as applied, of Maine appellate court of last resort invalid under Griffin v. Illinois when relief is withheld from denial of motion under that rule to be heard on the original record below by indigent pro se litigant on appeal of civil case colorable as criminal because arising in part from related criminal proceedings?

2. Is unpublished rule of that court stating that appeal will be dismissed for failure to prosecute upon subsequent non-payment of filing fee invalid as repugnant to due process requirements of the 14th Amendment when applied to dismiss the appeal, with prejudice, of that appellant in that case and relief from the dismissal is denied?

3. Does that court decide against the validity of statutes of the United States, and decide properly, when it orders without comment, and denies relief therefrom, remand for certification or completion of proceedings below of that appeal filed under state rule of court procedure identical to Rule 54(b), F.R.Civ.P., the appeal was properly filed under construction given to the Federal Rule, that court uses federal court decisions to interpret its rule and, under state case precedents, the question of its own appellate jurisdiction has been implicated?

4. Does that court in denying a motion for relief from the foregoing, without comment on the claim also that to do so would further sanction denials of timely, substantive, and procedural due process and redress of grievances and would continue to deny appellant counsel of his choice for those proceedings, so deny appellant his rights, privileges and immunities under the statutes and Constitution of the United States?

PARTIES TO THE PROCEEDING

PAUL SILVERMAN, in his individual capacity and his official capacity as President of the University of Maine at Orono; in their individual capacities and official capacities as tenured faculty of the Chemistry Department of UM at Orono, ROBERT D. DUNLAP, PAUL L. GOODFRIEND, BRIAN GREEN, JAMES L. WOLFHAGEN, MICHAEL D. BENTLEY, WILLIAM J. GEORGITIS, HOWARD H. PATTERSON, JAYENDRAN C. RASAIAH, CHARLES R. RUSS, JOHN A. ZOLLWEG; in their individual capacites and official capacities at the University of Maine at Orono, HOWARD R. NEVILLE, President, JAMES M. CLARK, Vice President for Academic Affairs, BASIL R. MYERS, Dean of the College of Engineering and Science, ASHLEY S. CAMPBELL, Acting Dean of the College of Engineering and Science, FREDERICK E. HUTCHINSON, Vice President for Research and Public Service, F. PHILIP DUFOUR, Director of Sponsored Programs Division, STEPHEN L. WEBER, Assistant to the President; in their individual capacities and official capacities as members of the Faculty Grievance Board in the Matter of Oscar E. Weigang, Jr., Grievant, HOWARD M. FOLEY, JAMES E. GALLAGHER, MELVIN GERSHMAN, JAMES F. HORAN (also as Assistant to the President), RUTH L. NADELHAFT; in their individual capacities and official capacities with the University of Maine, PATRICK E. McCARTHY, Chancellor, WILLIAM J. SULLIVAN, Vice Chancellor for Administration, SAMUEL J. D'AMICO, Associate Vice Chancellor for Employee Relations; in his individual capacity and official capacity as Chairman of the Board of Trustees, University of Maine, JAMES H. PAGE; in their individual capacities and official capacities as members of the Trustee Appeals Committee in the Matter of Oscar E. Weigang, Jr., Grievant, FRANCIS A. BROWN (also as Chairman, Board of Trustees), STANLEY J. EVANS, ELIZABETH S. RUSSELL; in their individual capacities and their official capacities as Counsel for the University of Maine and Officers of the various Courts, SUMNER T. BERNSTEIN,

PARTIES TO THE PROCEEDING (Concluded)

GEORGE M. SHUP, HAROLD J. RUBIN, GORDON F. GRIMES; in their individual capacities and their official capacities as Counsel for Oscar E. Weigang, Jr. and Officers of Superior Court, Penobscot, ss., JULIO DeSANCTIS III, MARSHALL T. CARY; in their individual capacities and their official capacities as Court Reporters, HAROLD M. HAGOPIAN, RONALD VENO, WILLIAM R. PIESKE; in their individual capacities and their official capacities in the University of Maine Police Department, A. G. REYNOLDS, Director, TERRY A. BURGESS, Detective, S. F. DUNTON, Officer; in their individual capacities and their official capacities in the Office of the District Attorney, Prosecutorial District V, DAVID M. COX, District Attorney, R. CHRISTOPHER ALMY, Assistant District Attorney; in their individual capacities and their official capacities in the Judicial Courts of the State of Maine, EUGENE W. BEAULIEU, Judge, State of Maine District Court for the Third District, ROBERT L. BROWNE, Justice, State of Maine Superior Court, Penobscot, ss., IAN MacINNES, Justice, State of Maine Superior Court, Penobscot, ss.; and persons unknown,

Appellees.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR PLENARY CONSIDERATION	6
1. This Court should address and clarify, for circumstances such as this case presents, the bearing that factors concerning Constitutional level of interest, extent to which proceedings are colorable as criminal, and adequacy of proceedings below have on the rights, under the Constitution, of indigents to maintain judicial proceedings without the prepayment of fees and costs or the incurrence of unnecessary expenditures.	6
2. This Court should address and clarify, for circumstances such as this case presents, the contours of substantive due process that protect the rights of persons under the 14th Amendment.	8
3. This Court should address and clarify, for circumstances such as this case presents, the requisites of timeliness for due process of law under the 14th Amendment.	9
4. This Court should decide as to the extent, when state judicial systems adopt as their own the federal rules of court procedure and decisional rules and policy developed by this Court, those judicial systems are bound by federal court decisions concerning those rules and policy.	9
CONCLUSION	11
AFFIDAVIT OF SERVICE	12

TABLE OF AUTHORITIES

Page

CASES:

Baldwin v. Missouri, 281 U.S. 586 (1930) 8

Barry v. Barchi, 443 U.S. 55 (1979) 9

Bauldin v. Barton County Mutual Ins. Co., 606 S.W. 2d 444 (Missouri, 1980) 10

Bearden v. Georgia, ___ U.S.___ (1983), 51 LW 4616 7

Board of Environmental Protection v. Bergeron, 434 A 2d 24 (Me. 1981) 3

Boddie v. Connecticut, 401 U.S. 371 (1971) 7

Brody v. Ruby, 267 N.W. 2d 902 (Iowa, 1978) 10

Burns v. Ohio, 360 U.S. 252 (1959) 2, 7

Campbell v. U.S., 295 A 2d 498 (District of Columbia, 1972) 9

Cohen v. Beneficial Loan Corp., 337 U.S. 541 (1949) 2, 11

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) 2

District of Columbia Court of Appeals v. Feldman, ___ U.S.___(1983), 51 LW 4285 3

Ellis v. Crockett, 451 P 2d 814 (Hawaii, 1969) 10

Florida v. Casal, ___ U.S.___(1983), 51 LW 4827 3

Fredricks v. Foltz, 557 P 2d 1252 (Kansas, 1976) 10

General Motors Corp. v. Arnett, 418 N.E. 2d 546 (Indiana, 1981) 10

Griffin v. Illinois, 351 U.S. 12 (1956) i, 7

Hampton v. Mow Sun Wong, 426 U.S. 88 (1976) 8, 9

Hedlund v. Ford Marketing Corp., 629 P 2d 1012 (Arizona, 1981) 10

In re Weigang, ___ U.S.___(1982), 51 LW 3259 6

In re Weigang, ___ U.S.___(1983), 51 LW 3883 6

Little v. Streater, 452 U.S. 1 (1981) 8

Maine Central R. Co. v. Bangor & Aroostook R. Co., 395 A 2d 1107 (Me. 1978) 11

Metropolitan Mortgage Fund, Inc. v. Basiliko, 415 A 2d 582 (Maryland, 1980) 10

Moore v. East Cleveland, 431 U.S. 494 (1977) 8

National Socialist Party v. Village of Skokie, 432 U.S. 43 (1977) 2

TABLE OF AUTHORITIES (Continued)

	Page
CASES (Concluded):	
North Dakota Pharmacy Board v. Snyder's Drug Stores, Inc., 414 U.S. 156 (1973)	8
Northeast Investment Co., Inc. v. Leisure Living Communities, Inc., 351 A 2d 845 (Me. 1976)	11
Ortwein v. Schwab, 410 U.S. 656 (1973)	7
Parish National Bank v. Lane, 397 So 2d 1282 (Louisiana, 1981)	10
People v. Lucero, 584 P 2d 1208 (Colorado, 1978)	10
Smithey v. State, 602 S.W. 2d 676 (Arkansas, 1980)	10
State v. Jones, 598 S.W. 2d 209 (Tennessee, 1980)	10
State v. Wedge, 322 A 2d 328 (Me. 1974)	11
Supreme Court of Virginia v. Consumers Union, 446 U.S. 719 (1980)	3
Supreme Court of Virginia v. Consumers Union, ___ U.S. ___ (1983), 51 LW 3899	3
Unemployment Compensation Division v. Bjornsrud, 261 N.W. 2d 396 (North Dakota, 1977)	10
United States v. Hvass, 355 U.S. 570 (1958)	3
United States v. Kras, 409 U.S. 434 (1973)	8
Weigang v. Smith, Attorney General of U.S., ___ U.S. ___ (1982), 51 LW 3256	6
Westinghouse Electric Supply Co. v. Healy Corp., 359 N.E. 2d 634 (Massachusetts, 1977)	10
Whitefoot v. Hanover Ins. Co., 561 P 2d 717 (Wyoming, 1977)	10
Wilson v. Continental Ins. Companies, 274 N.W. 2d 679 (Wisconsin, 1979)	10
Zuberbuhler v. Division of Administration, State Dept. of Transportation, 344 So 2d 1304 (Florida, 1977)	10
CONSTITUTIONAL PROVISIONS:	
Constitution of the United States	i, iv, 3, 7, 8
5th Amendment	8
14th Amendment	i, iv, 3, 8, 9
Constitution of the State of Maine	3

TABLE OF AUTHORITIES (Concluded)

	Page
STATUTES:	
28 U.S.C. § 1257(1),(2),(3)	2, 3
28 U.S.C. § 1291	11
28 U.S.C. § 2101(c),(d)	2
28 U.S.C. § 2102	2
RULES:	
Rules of the Supreme Court of the United States,	
Rule 11.3	2
Federal Rules of Civil Procedure,	
Rules, Generally	9, 10
Rule 54(b)	i, 2, 5, 6, 11
Federal Rules of Criminal Procedure,	
Rules, Generally	9, 10
Maine Rules of Civil Procedure,	
Rule 54(b)	3, 5, 6, 11
Rule 73(g)	4
Rule 74C(f)	4, 5

No._____

in the
SUPREME COURT OF THE UNITED STATES
October Term, 1982

OSCAR E. WEIGANG, JR.,

Appellant,

v.

PAUL SILVERMAN, et al.,

Appellees

On Appeal
from the
Supreme Judicial Court of the State of Maine

STATEMENT AS TO JURISDICTION

Appellant seeks review of the order, dated June 7, 1983, of the Maine Supreme Judicial Court sitting as the Law Court denying Appellant relief from orders of that court.

OPINIONS BELOW

No opinions, written or oral, were delivered in the Law Court or in the Superior Court, Penobscot, ss., below. The Order of the Law Court dated June 7, 1983 appears as Appendix A, p. 2a. The orders of that court from which Appellant was seeking relief appear as Appendices B - E, pp. 3a - 6a.

A Decision and Order of the Superior Court, dated March 7, 1983, and its amendment, Order to Amend Judgment dated March 23, 1983, from which appeal to the Law Court was taken appear as Appendices F and G, pp. 7a - 9a.

An "opinion" of the Faculty Grievance Board of the University of Maine at Orono, Council of Colleges, In the Matter of Oscar Weigang, delivered December 26, 1978, appears as Appendix H, pp. 10a - 14a. The Report of the Trustee Appeals Committee, In Re the Dismissal of Oscar E. Weigang, Jr., dated October 22, 1979, appears as Appendix I, pp 15a and 16a.

JURISDICTION

The Order of the Law Court, operating as a final judgment upon matters drawn in question by the Motion for Relief from Orders, was rendered June 7, 1983 in a civil matter making a claim for relief, in part, from prior criminal proceedings against the Appellant. 28 U.S.C. § 2102 is invoked.

This Statement follows within ninety days thereof, no petition for rehearing having been filed.

The Notice of Appeal was filed July 8, 1983 with the Clerk of the Supreme Judicial Court of the State of Maine, Sitting as the Law Court, a copy appearing as Appendix J, p. 17a, and was timely pursuant to 28 U.S.C. § 2101(c),(d).

In the alternative for the notice by letter, dated April 8, 1983, advising that non-payment of a filing fee would result in dismissal, Appendix D, p. 5a, which for purposes of 28 U.S.C. § 1257 is treated as a final judgment (Burns v. Ohio, 360 U.S. 252, 257 (1959)), the Motion for Relief from Orders may be regarded as a motion for rehearing pursuant to Rule 11.3 of this Court.

The jurisdiction of this Court is conferred by 28 U.S.C. § 1257(1),(2) as to the appeal questions, by 28 U.S.C. § 1257(3) as to the certiorari question incorporated in this appeal.

The following cases are believed to sustain the jurisdiction of this Court. National Socialist Party v. Village of Skokie, 432 U.S. 43 (1977)(as to finality, for purposes of jurisdiction, concerning rights "separable from and collateral to" the merits). Cohen v. Beneficial Loan Corp., 337 U.S. 541, 546 (1949)(as to exceptions to finality rule, concerning rights "separable from and collateral to" the merits). Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975)(at 479 as to dismissal for failure to pay filing fee, at 481 as to certification and certifiability under Rule 54(b), F.R.Civ.P., at 482-484 as to relief from orders void as inconsistent with due process of law).

United States v. Hvass, 355 U.S. 570 (1958)(as to appeal jurisdiction being sustained where based on "invalidity of statute" and that "law of the United States" is a District Court rule with a legislative base). Supreme Court of Virginia v. Consumers Union, 446 U.S. 719 (1980)(as to legislative role of state court in promulgating disciplinary rules governing conduct of attorneys), also ____ U.S.____ (1983), 51 LW 3899, 3900. District of Columbia Court of Appeals v. Feldman, ____ U.S.____(1983), 51 LW 4285, 4292 (as to § 1257 review of state bar rules promulgated by court, if proceedings below produce a judicial decision in a particular case).

Florida v. Casal, ____ U.S.____(1983), 51 LW 4827, 4828 (as to independent and adequate state grounds pretermitting federal question). Board of Environmental Protection v. Bergeron, 434 A 2d , 24, n. 9 (Me. 1981)(as to conformity of concepts of due process declared by Maine Constitution and U. S. Constitution).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States, 14th Amendment:

> Section 1. .... No State ... shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rule 54(b), Maine Rules of Civil Procedure:

> Judgment upon Multiple Claims or Involving Multiple Parties. Except as otherwise provided in Rule 80(d) [concerning divorce and annulment], when more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction any order or other form of decision, however designated, except those enumerated in the last sentence of Rule 80(d), which adjudicates less than all the claims or the rights and liabilities of

less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Rule 73(g), Maine Rules of Civil Procedure:

(2) For Failure to Perfect Appeal. If an appellant fails to comply with the provisions of Rules 73 through 76B within the times prescribed therein, the Law Court may, on motion of any other party or on its own initiative, dismiss the appeal for want of prosecution.

Rule 74C(f), Maine Rules of Civil Procedure:

Hearing of Appeals on the Original Record Without the Necessity of an Appendix. The Law Court may on good cause shown dispense with the requirement of an appendix and permit appeals to be heard on the original record, with such copies of the record, or relevant parts thereof, as the Law Court may require.

STATEMENT OF THE CASE

Appellant filed his complaint in Superior Court, Penobscot, ss., of the State of Maine on October 10, 1983 setting out his claims for relief arising from proceedings that dismissed him as department chairman and tenured faculty member of the University of Maine at Orono and events subsequent thereto, including his arrest and arraignment for criminal trespass on the Orono campus.

After an initial hearing on December 22, 1982 to consider various motions to dismiss of numerous parties, the only hearing prior to appeal, the Superior Court "converted" those motions to "motions for summary judgment". Upon consideration "of all allegations in the Complaint" relating to those parties, that court issued its Decision and Order of March 7, 1983 (Appendix F, p. 7a) finding "that the complaint either fails to state a claim upon which relief could be granted, or in the situations where affidavits have been submitted, compels the entry of judgment for the defendant as a matter of law" in such an instance "when it appears to a certainty that plaintiff is entitled to no relief in support of his claim".

On April 6, 1983 the Appellant's Notice of Appeal from the Decision and Order of March 7, 1983 was filed in the Superior Court (Appendix K, p. 19a). The Notice asserted that "pursuant to Rule 54(b) of Maine Rules of Civil Procedure [cf., Rule 54(b), F.R.Civ.P.]" the Superior Court had "expressly directed 'entry of judgment ... as a matter of law' and determined [that] there [was] no just reason for delay in that 'it appears to a certainty that Plaintiff is entitled to no relief' from fewer than all of the parties".

Also on April 6, 1983 the Appellant submitted to the Law Court his Motion to Hear Appeal on the Original Record, pursuant to Rule 74C(f) of the Maine Rules of Civil Procedure, raising in that motion (Appendix L, p 20a) a claim of his indigency that also related the matter on appeal to previous criminal proceedings.

The Chief Justice, for the Law Court, on April 8, 1983 filed an Order of Remand (Appendix C, p 4a) that, after noting the appeal was pending, directed "further proceedings to dispose of all pending claims; or, in the alternative, for a determination by the presiding Justice of the appropriateness of the entry on the docket of an order pursuant to Rule 54(b), M.R.Civ.P. ...", taking no note of Appellant's claim that the determination had been made.

A letter signed by the Clerk of the Law Court, also of April 8, 1983, informed the Appellant that "effective April 1, 1983, a filing fee of $50.00 was instituted for all civil appeals" (Appendix D, p. 5a) and that unless the fee was paid by April 19, 1983, the appellate case would be dismissed for want of prosecution. On May 13, 1983 an Associate Justice, for the Law Court, dismissed the appeal (Appendix E, p. 6a) so as to operate with prejudice, based only on the failure to pay the filing fee.

On May 25, 1983 the Appellant submitted to the Law Court his Motion for Relief from Orders (Appendix N, p 23a) for reason that those orders, operating as final judgments, were void. That motion fully raised the questions which are now presented to this Court on appeal and on certiorari. The Appellant cited points and authority that the orders of the Law Court "separately and collectively operate as a final judgment [for purposes of that motion] ... [falling] within the exceptions to the finality rule" adopted by this Court and the Law Court and that those orders were void as the Law Court had "acted in a manner inconsistent with due process of law". It was argued further that the Order of Remand implicated the question of certifiability pursuant to Rule 54(b) as interpreted by this Court and the Law Court and that the remand order constitutes a continuation of the "irreparable injury through loss ... of ... liberty and withheld back pay" where the Appellant "has been afforded no means effective for the State providing due process on the merits of his claims for redress first raised December 16, 1977". That history of Appellant's claims for redress, presented in the motion by reference, was previously presented to this Court. In re Weigang, ____ U.S.____ (1982), 51 LW 3259 (cert. denied); see also Weigang v. Smith, Attorney General of U.S., ____ U.S. ____(1982), 51 LW 3256 (cert. denied), In re Weigang, ____ U.S. ____ (1983), 51 LW 3883 (mand. denied).

On June 7, 1983, the Chief Justice, for the Law Court, ordered (Appendix A, p. 2a) that the motion for relief from orders be denied, without elaboration or separate opinion.

REASONS FOR PLENARY CONSIDERATION

1. This Court should address and clarify, for circumstances such as this case presents, the bearing that factors concerning Constitutional level of interest, extent to which proceedings are colorable as criminal, and adequacy of pro-

ceedings below have on the rights, under the Constitution, of indigents to maintain judicial proceedings without the prepayment of fees and costs or the incurrence of unnecessary expenditures.

This Court has frequently decided that substantial questions, requiring the full consideration of the Court, are presented when the rights of indigents, under the Federal Constitution, to maintain judicial proceedings without the prepayment of fees or costs are put into question.

Griffin v. Illinois, 351 U.S. 12 (1956) settled the right of a criminal indigent to a certified copy, without cost, of the entire record of trial, such being necessary for appellate review. Burns v. Ohio, 360 U.S. 252 (1959) established that a state may not, consistent with the Constitution, require an indigent defendant in a criminal case to pay a filing fee before permitting him to file a motion for leave to appeal. The Court has recently restated in Bearden v. Georgia, ____ U.S.____(1983), 51 LW 4616, 4617 some of its conclusions, under due process and equal protection principles, for cases involving indigent parties in the criminal justice system.

Ortwein v. Schwab, 410 U.S. 656, 659 (1973) held that the filing fee requirement of a state court of appeals was not a denial of due process to appellants seeking judicial review of agency hearings where those hearings met minimal requirements of due process. Justice Douglas, in his dissent, concluded that the important question, whether there is a due process right to judicial review, had been studiously avoided, though answered sub silentio. "Access to the courts before a person is deprived of valuable interests, at least with respect to questions of law, seems to me to be the essence of due process." At 662. But the Court distinguished the case from Boddie v. Connecticut, 401 U.S. 371 (1971) in that the question presented for appellate review did not rise to the constitutional level of interest in dissolving a marriage. Like-

wise in United States v. Kras, 409 U.S. 434 (1973), the interest in elimination of bankruptcy debt, coupled with the availability of other modes of procedure, did not sufficiently implicate rights under the Constitution. On the other hand, Little v. Streater, 452 U.S. 1 (1981) established that due process prohibits any requirement that fees for blood testing necessary for the defense of an indigent in a paternity case be paid by him.

It is important to the fair and efficient functioning of state and federal judicial systems that such pertinent factors be identified and applied to likely recurring situations.

2. This Court should address and clarify, for circumstances such as this case presents, the contours of substantive due process that protect the rights of persons under the 14th Amendment.

This Court has repudiated much of its "Lochner Era" which expanded substantive due process so as to "commit to [this] Court, with no guide but the Court's own discretion, the validity [under the 14th Amendment] of whatever laws the states may pass". Baldwin v. Missouri, 281 U.S. 586, 595 (1930)(Justice Holmes, dissenting). See also, North Dakota Pharmacy Board v. Snyder's Drug Stores, Inc., 414 U.S. 156, 164 - 167 (1973).

However, in Moore v. East Cleveland, 431 U.S. 494, 502 (1977) the majority opinion of a closely divided Court stated that the history of that era "demonstrates there is reason for concern" and "counsels caution and restraint", but "does not counsel abandonment" of sound principles of substantive due process. Hampton v. Mow Sun Wong, 426 U.S. 88, 103 (1976) held that the Due Process Clause (of the 5th Amendment) authorizes, according to cases of the Court, analysis of rules and therefore "has a substantive as well as a procedural aspect".

However, substantive claims need not be resolved if essential procedures have not been followed. At 103. It is unclear, as a general proposition, to what extent, if any, case law and its decisions are subject to scrutiny under substantive due process principles. This case presents candidates for any such scrutiny.

It is important that our judicial systems have the guidance of this Court in this important, but obscured, aspect of due process law.

3. This Court should address and clarify, for circumstances such as this case presents, the requisites of timeliness for due process of law under the 14th Amendment.

Barry v. Barchi, 443 U.S. 55, 66 (1979) expresses the holding of this Court that due process requires "prompt disposition of outstanding issues between [the aggrieved] and the State". Aside from instances early in the history of this case under administrative proceedings, this Court should make clear what requirements and standards are imposed on judicial proceedings in state courts.

4. This Court should decide as to the extent, when state judicial systems adopt as their own federal rules of court procedure and decisional rules and policy developed by this Court, those judicial systems are bound by federal court decisions concerning those rules and policy.

Many states have adopted rules of court procedure patterned after the Federal Rules of Civil (or Criminal) Procedure. As in the case for the State of Maine, the federal rules have been adopted verbatim, with the same numbering and paragraphing, with only those variations necessary through state law or practice.

More or less deference to the construction by the federal courts of similar or identical rules has been accorded by the state courts. E.g., Campbell v. U.S., 295 A 2d 498

(Dist. of Columbia, 1972)(since it is provided by statute that business of Superior Court shall be conducted according to applicable federal rules, those rules must be construed in light of meaning of corresponding federal rules, and have force and effect of law).

Or, Zuberbuhler v. Division of Administration, State Dept. of Transportation, 344 So 2d 1304 (Florida, 1977)(generally it must be assumed that in adopting a rule identical to a federal rule, the Supreme Court intended to achieve same results that would inure under federal rule); accord, Westinghouse Electric Supply Co. v. Healy Corp., 359 N.E. 2d 634 (Massachusetts, 1977).

Or, Hedlund v. Ford Marketing Corp., 629 P 2d 1012 (Arizona, 1981)(the Court of Appeals gives great weight to federal interpretation of Federal Rules of Civil Procedure in construing state rule derived from Federal Rules); accord, Smithey v. State, 602 S.W. 2d 676 (Arkansas, 1980), Ellis v. Crockett, 451 P 2d 814 (Hawaii, 1969), Brody v. Ruby, 267 N.W.2d 902 (Iowa, 1978), Fredricks v. Foltz, 557 P 2d 1252 (Kansas, 1976), Parish National Bank v. Lane, 397 So 2d 1282 (Louisiana, 1981), Metropolitan Mortgage Fund, Inc. v. Basiliko, 415 A 2d 582 (Maryland, 1980), Bauldin v. Barton County Mutual Ins. Co., 606 S.W. 2d 444 (Missouri, 1980), Unemployment Compensation Division v. Bjornsrud, 261 N.W. 2d 396 (North Dakota, 1977), State v. Jones, 598 S.W. 2d 209 (Tennessee, 1980), Wilson v. Continental Ins. Companies, 274 N.W. 2d 679 (Wisconsin, 1979), Whitefoot v. Hanover Ins. Co., 561 P 2d 717 (Wyoming, 1977).

Or, General Motors Corp. v. Arnett, 418 N.E. 2d 546 (Indiana, 1981)(federal cases construing rule allowing amended pleading are not applicable to wrongful death action under Indiana law although wording of federal rule is identical with that of state rule); accord, People v. Lucero, 584 P 2d 1208 (Colorado, 1978).

The situation for the State of Maine is exemplified, perhaps, by Maine Central R. Co. v. Bangor & Aroostook R. Co., 395 A 2d 1107 (Me. 1978)(at 114 for Rule 54(b)) and, more generally, State v. Wedge, 322 A 2d 328 (Me. 1974).

In ways similar in many respects, the state courts, by their own broad quasi-legislative decisions, have adopted federal statutory or decisional rules of a similar character. For example, the State of Maine has, rather than a statutory final decision rule like 28 U.S.C. § 1291, a parallel judicially created final judgment rule. Maine Central R. Co., at 1114, n. 8. The State Supreme Judicial Court has adopted the exceptions to the finality rule set out by this Court in Cohen v. Beneficial Loan Corp., 337 U.S. 541 (1949). Northeast Investment Co., Inc. v. Leisure Living Communities, Inc., 351 A 2d 845, 849-51 (Me. 1976). See also Maine Central R. Co., at 114, n. 9.

The judicial systems of the states should be bound by no less than any applicable principles of substantive due process. This Court should address and clarify also any further bounds.

CONCLUSION

For these reasons, this appeal should be allowed and plenary consideration provided.

Respectfully submitted,

Oscar E. Weigang, Jr., Appellant
pro se

168 Aster Road, A.O.
Macungie, PA 18062
(215) 398-3613

Dated: July 18, 1983

RECEIVED
JUL 18 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 83-5072

in the

SUPREME COURT OF THE UNITED STATES

October Term, 1982

OSCAR E. WEIGANG, JR.,

Appellant,

v.

PAUL SILVERMAN, et al.,

Appellees

On Appeal
from the
Supreme Judicial Court of the State of Maine

APPENDIX TO JURISDICTIONAL STATEMENT

Oscar E. Weigang, Jr.
168 Aster Road, A.O.
Macungie, Pennsylvania
18062
(215) 398-3613

Pro Se

TABLE OF CONTENTS

Page **

TABLE OF AUTHORITIES iii

I. Opinions, Order, Findings of Fact, and Conclusions of Law Delivered upon Judgment of Maine Supreme Judicial Court

A. Order, Dated June 7, 1983, Weigang v. Silverman et al., Law Docket No. Pen-83-132 2

II. Other Opinions, Orders, Findings of Facts, and Conclusions of Law by Courts and Agencies

B. Order, Dated April 8, 1983, Weigang v. Silverman, et al., Law Docket No. Pen-83-132 3

C. Order of Remand, Dated April 8, 1983, Weigang v. Silverman et al., Law Docket No. Pen-83-132 4

D. Letter, Dated April 8, 1983, Re: Weigang v. Silverman, et al., Law Docket No. Pen-83-132, from Chute to Weigang 5

E. Order, Dated May 13, 1983, Weigang v. Silverman, et al., Law Docket No. Pen-83-132 6

F. Decision and Order, Dated 3/7/83, Weigang v. Silverman, et al., Docket No. CV 82-499 7

G. Order to Amend Judgment, Dated 3/23(?)/83, Weigang v. Silverman, et al., Docket No. CV 82-499 9

H. Report, Dated 26 December 1978, In the Matter of Oscar Weigang, from Faculty Grievance Board of University of Maine at Orono to Weigang, Neville 10

I. Report of Trustee Appeals Committee, Dated October 22, 1979, In Re the Dismissal of Oscar E. Weigang, Jr., from Brown, Evans, Russell, University of Maine 15

III. Judgment or Decree Appealed From; Order on Rehearing

See A. above.

IV. Notice of Appeal

J. Notice of Appeal to the Supreme Court of the United States, Dated July 8, 1983, Weigang v. Silverman, et al., Law Docket No. Pen-83-132 17

** Pagination in the body of the Appendix indicated by 2a, 3a, 4a, ...

TABLE OF CONTENTS (Concluded)

Page

V. Other Papers

K. Notice of Appeal, Dated April 4, 1983, Weigang v. Silverman et al., Docket No. CV 82-499 19

L. Motion to Hear Appeal on the Original Record, Dated April 4, 1983, Weigang v. Silverman, et al., Law Docket No. [Pen-83-132] 20

M. Request for Transmission of the Record, Dated April 4, 1983, Weigang v. Silverman, et al., Docket No. CV 82-499 22

N. Motion for Relief from Orders, Dated May 25, 1983, Weigang v. Silverman, et al., Law Docket No. Pen-83-132 23

AFFIDAVIT OF SERVICE 57

TABLE OF AUTHORITIES

Page

CASES:

Bacon v. Penney, 418 A 2d 1136 (Me. 1980) 25

Barry v. Barchi, 443 U.S. 55 (1979) 29

Bramson v. Chester L. Jordan & Co., 379 A 2d 730 (Me. 1977) 8, 33

Cohen v. Beneficial Loan Corp., 377 U.S. 541 (1949) 24

Cole v. Petersen Realty, Inc., 432 A 2d 752 (Me. 1981) 4, 24, 27

Coopers & Lybrand v. Livesay, 437 U.S. 464 (1978) 25

County of Allegheny v. Frank Mashuda Co., 360 U.S. 185 (1959) 29

Durgin v. Robertson, 428 A 2d 65 (Me. 1981) 25

Fournier v. Fournier, 376 A 2d 100 (Me. 1977) 28

Gibbes v. Zimmerman, 290 U.S. 329 (1933) 27, 29

Griffin v. Illinois, 351 U.S. 12 (1956) 28

Hampton v. Mow Sun Wong, 426 U.S. 88 (1976) 27, 29

Hanley v. Evans, 443 A 2d 65 (Me. 1982) 24, 29

Harris Baking Co. v. Maine Employment Security Commission, 457 A 2d 427 (Me. 1983) 24

Lindsey v. Normet, 405 U.S. 56 (1972) 27

Link v. Wabash Railroad Co., 370 U.S. 626 (1962) 27

Luchetti v. Luchetti, 445 A 2d 675 (Me. 1982) 24

Mitchell v. W. T. Grant Co., 416 U.S. 600 (1974) 29

Moses H. Cone Memorial Hospital v. Mercury Construction Corp., ___ U.S. ___ (1983), 51 LW 4156 24, 25, 26

Northeast Bank N.A. v. Crochere, 438 A 2d 266 (Me. 1981) 26

Northeast Investment Co., Inc. v. Leisure Living Communities, Inc., 351 A 2d 845 (Me. 1976) 24, 25

Ortwein v. Schwab, 410 U.S. 656 (1973) 29

Paso Builders, Inc. v. Hebard, 417 P 2d 916 (Nev. 1966) 25

Peaslee v. Pedco, Inc., 388 A 2d 103 (Me. 1978) 27

Rice v. Amerling, 433 A 2d 388 (Me. 1981) 27

Sears, Roebuck & Co. v. Mackey, 351 U.S. 427 (1956) 25

UV Industries, Inc. v. Posner, 466 F. Supp. 1251 (D.C. Dist. Me. 19) 36

TABLE OF AUTHORITIES (Continued)

	Page
CASES (Concluded):	
Warren v. Waterville Urban Renewal Authority, 290 A 2d 362 (Me. 1972)	26
Welch v. Henry, 305 U.S. 134 (1938)	28
CONSTITUTIONAL PROVISIONS:	
Constitution of the United States	37
14th Amendment	27, 28
STATUTES:	
28 U.S.C. § 1257(1),(2)	17
5 M.R.S.A. § 4551 et seq. (Maine Human Rights Act)	53
14 M.R.S.A. § 5945, 1.A., 2.	43
RULES:	
Maine Rules of Civil Procedure,	
Rule 1	23
Rule 5	21
Rule 6(d)	38
Rule 7	21
Rule 12(b)	20
Rule 41(a)(1)	26
Rule 41(b)(3)	26
Rule 54(b)	4, 19, 24, 27, 30, 44
Rule 54A (As amended, eff. April 1, 1983)	5, 6, 28
Rule 58	4, 44
Rule 60(a)	9, 34
Rule 60(b)(4)	23
Rule 65(a)(1),(2)	36
Rule 65(b)(2)	37
Rule 65(f)	36
Rule 72(d) (As amended, eff. April 1, 1983)	5, 28
Rule 73(g)(2)	5, 6
Rule 73(h) (As amended, eff. April 1, 1983)	5, 28
Rule 73(i)(1) (As amended, eff. April 1, 1983)	5, 28

TABLE OF AUTHORITIES (Concluded)

Page

RULES (Concluded):

Maine Rules of Civil Procedure (Concluded),

Rule 74A 22

Rule 74A(e) 22

Rule 74C(f) 3, 20

Rule 79 4, 44

Maine District Court Civil Rules,

Rule 54A (As amended, eff. April 1, 1983) 5, 28

Maine District Court Criminal Rules,

Rule 12(b)(2) 37

Maine Rules of Probate Procedure,

Pule 54A (As amended, eff. April 1, 1983) 5, 28

Rule 73 (As amended, eff. April 1, 1983) 5, 28

MISCELLANEOUS:

16A Am. Jur. 2d, Constitutional Law, § 740 27

Wright and Miller, Federal Practice and Procedure: Civil § 2862, p 198 26

Maine Rules of Court, 1983 (West Publishing Co., 1983) 28

Cannon 3, Code of Judicial Conduct (Effective April 1, 1974) [Found in Maine Rules of Court, 1983, p. 768] 35

(There is no page 1a)

STATE OF MAINE
PENOBSCOT, ss

SUPERIOR JUDICIAL COURT
SITTING AS THE LAW COURT
Law Docket No. Pen-83-132

OSCAR E. WEIGAND, JR.]
]
vs.] ORDER
]
PAUL SILVERMAN, et al.]

Upon motion of appellant for relief from orders,

It is ORDERED that the motion be and hereby is DENIED.

Dated this seventh day of June, 1983.

For the Court,

Chief Justice

STATE OF MAINE
CLERK OF THE COURT

JUN 8 1983

RECEIVED AND FILED

STATE OF MAINE
PENOBSCOT, ss

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Law Docket No. Pen-83-132

OSCAR E. WEIGANG, JR.

vs.

PAUL SILVERMAN, et al.

ORDER

Upon motion of appellant to hear appeal on the original record pursuant to M.R.civ.P. 74(f),

It is ORDERED that the motion be and hereby is DENIED.

Dated this eighth day of April, 1983.

For the Court,

Chief Justice

STATE OF MAINE
CLERK OF THE CT.
APR 8 1983
RECEIVED AND FILED

STATE OF MAINE
PENOBSCOT, ss

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Law Docket No. Pen-83-132

OSCAR E. WEIGANG, JR.

vs.

PAUL SILVERMAN, et al.

ORDER OF REMAND

WHEREAS the above-entitled appeal is now pending in the Law Court, and

WHEREAS under Rule 58, M.R.Civ.P., the notation of judgment on the civil docket pursuant to Rule 79, M.R.Civ.P., constitutes the entry of judgment, and

WHEREAS the notation of judgment in the instant case does not reflect any final judgment having been entered on the counterclaim of defendant Hagopian, or the claims against defendants Stafford, Birtel, Hunter, National Science Foundation, and United States Attorney General,

Now, therefore, it is ORDERED that the case be remanded to the Superior Court for such further proceedings before the presiding Justice as are necessary to dispose of all pending claims; or, in the alternative, for a determination by the presiding Justice of the appropriateness of the entry on the docket of an order pursuant to Rule 54(b), M.R.Civ.P., in accordance with Cole v. Petersen Realty, Inc., 432 A.2d. 752(Me.1981).

Upon completion of proceedings on remand, the case will be restored to the Law Court docket, subject to, and only in the event of appellant's compliance with, the following conditions:

1. That appellant promptly, and in any event within the time provided by the rules, file their notice of appeal from the judgment entered pursuant to this order.

2. That appellant cause the record on appeal to be expanded to reflect all action taken in Superior Court subsequent to this remand and to be transmitted to the Law Court within 20 days of the filing of the notice of appeal required above.

Dated this eighth day of April, 1983.

CLERK OF THE SJ.CT

APR 8 1983

RECEIVED AND FILED

For the Court,

Chief Justice

STATE OF MAINE
SUPREME JUDICIAL COURT
P O BOX 368
PORTLAND, MAINE 04112

JAMES C CHUTE
CLERK OF THE LAW COURT
REPORTER OF DECISIONS
EXECUTIVE CLERK OF THE
SUPREME JUDICIAL COURT

AREA CODE 207
TELEPHONE
772 2695

April 8, 1983

Mr. Oscar Weigang, Jr.
168 Aster Road
Macungie, PA 18062

Re: Oscar F. Weigang, Jr. vs. Paul Silverman, et al.
Law Docket No. Pen-83-122

Dear Counsel:

Effective April 1, 1983*, a filing fee of $50.00 was instituted for all civil appeals and reports. Unless the Clerk of the Superior Court notifies me that the fee has been paid by April 19, 1983, this case will be dismissed for want of prosecution pursuant to M.R.Civ.P. 73(g)(2).

In Probate, Workers' Compensation and Public Utilities matters, the fee shall be paid directly by check to the Clerk of the Law Court.

Very truly yours,

James C. Chute
Clerk of the Law Court

JCC:vb

cc: Clerk of Courts
Penobscot County

*Amendments to M.R.Civ.P. 54A, 72(d), 73(h), 73(i)(1), Dist.Ct.Civ.R. 54A, M.R.Prob.P. 54A, 73.

STATE OF MAINE
PENOBSCOT, ss

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Law Docket No. Pen-83-132

OSCAR E. WEIGANG, JR.]
]
vs.] ORDER
]
PAUL SILVERMAN et al.]

It is ORDERED that the above-named appeal is hereby DISMISSED pursuant to M.R.Civ.P. 73(g)(2) for failure to pay the filing fee imposed by M.R.Civ.P. 54A.

Dated this thirteenth day of May, 1983.

For the Court,

Edward S. Godfrey
Associate Justice

STATE OF MAINE
CLERK OF THE COURT

MAY 13 19[illegible]

RECEIVED AND FILED

STATE OF MAINE

PENOBSCOT, ss.

SUPERIOR COURT
Civil Action
Docket No. CV 82-499

FILED AND ENTERED
DATE
ATTEST: Gladyn M. Pye
CLERK

OSCAR E. HEIGANG, JR., Plaintiff,

v.

PAUL SILVERMAN, ET AL, Defendants

DECISION AND ORDER

This case came on for hearing on numerous Motions to Dismiss filed by various defendants in this case. The Court heard arguments and is now considering Motions filed on behalf of all University of Maine administrators and employees, Marshall T. Cary, Ian MacInnes, Robert L. Browne, Eugene Beaulieu, David Cox, R. Christopher Almy, Gordon R. Grimes, George M. Shur, Sumner T. Bernstein, Harold J. Rubin, Julio De Sanctis, Harold Hagopian, Ronald Veno and William Pieske.

After the hearing on December 22, 1982, the Court issued an Order in which it stated that each party would submit an affidavit as the Motions to Dismiss were converted into Motions for Summary Judgment. On January 5, 1983 the Court received a letter from counsel representing defendants Grimes, Shur, Bernstein and Rubin in which a request was made that the Motion to Dismiss as to those defendants not be converted. As to all other defendants, the Motion to Dismiss has been properly converted as matters outside the pleadings have been submitted for consideration.

After careful review of all allegations in the Complaint related to the aforementioned defendants and the affidavits, the Court finds that the complaint either fails to state a claim upon which relief could be granted, or in the situations where affidavits have been submitted, compels the entry of judgment for the defendant as a matter of law. Although this Court recognizes its obligation to remain flexible when reviewing complaints filed by pro se litigants, it must nonetheless act to

dismiss when it appears to a certainty that plaintiff is entitled to no relief in support of his claim. See Branson v. Chester L. Jordan & Co., 379 A.2d 730 (Me. 1977). If the Court held otherwise it would place itself in the position of acting as counsel for the plaintiff.

Accordingly, the entry shall be:

It is hereby ORDERED that defendants Shur, Grimes, Bernstein and Rubin's Motion to Dismiss is granted. Counts 7, 10, 12, 13, 14 and 15 of Plaintiff's Complaint are dismissed as to defendants Shur, Grimes, Bernstein and Rubin. It is ordered that defendant Ian MacInnes's Motion for Summary Judgment is granted. Judgment is entered for the defendant Ian MacInnes and against the plaintiff on Counts 10, 13 and 15 of the Complaint. It is ordered that defendant Robert L. Browne's Motion for Summary Judgment is granted. Judgment is entered for the defendant Robert L. Browne on Counts 10, 13 and 14 of the Complaint. It is ordered that defendant Eugene W. Beaulieu's Motion for Summary Judgment is granted. Judgment is entered for the defendant Eugene W. Beaulieu and against the plaintiff on Counts 10, 13 and 15 of the Complaint. It is ordered that defendant David A. Cox's Motion for Summary Judgment is granted. Judgment is entered for the defendant David A. Cox and against the plaintiff on Counts 13 and 15 of the Complaint. It is ordered that defendant R. Christopher Almy's Motion for Summary Judgment is granted. Judgment is entered for the defendant R. Christopher Almy and against the plaintiff on Counts 13 and 15 of the Complaint. It is ordered that defendant Marshall T. Cary's Motion for Summary Judgment is granted. Judgment is entered for the defendant Marshall T. Cary and against the plaintiff on Count 10 of the Complaint. It is ordered that defendant Julio DeSanctis's Motion for Summary Judgment is granted. Judgment is entered for the defendant Julio DeSanctis and against the plaintiff on Count 5 of the Complaint. It is ordered that defendants Pieski, Veno and Hagopian's Motions for Summary Judgment are granted Judgment is entered for the defendants Pieski, Veno and Hagopian on Count 7 of the Complaint. It is ordered that the Motion to Dismiss filed on behalf of all University of Maine professors, employees, administrators and trustees is granted. Counts 1, 2, 3, 4, 5, 6, 7, 8, 9 (as it relates to the University of Maine), 11, 12, 13 and 15 are dismiss-

Dated: 3/7/83

Justice, Superior Court

STATE OF MAINE

PENOBSCOT, ss.

SUPERIOR COURT
Civil Action
Docket No. CV 82-499

FILED AND ENTERED
DATE
ATTEST Madelyn M. Pyte
CLERK

OSCAR E. NEIGANG, JR.,

Plaintiff,

v.

PAUL SILVERMAN, ET AL,

Defendant.

ORDER TO AMEND JUDGMENT

On March 7, 1983, the Court entered judgment on the complaint in this case. Counsel for all University of Maine defendants has moved to amend the Court's Order.

The Court notes that pursuant to Rule 60(a), M.R.Civ.P., a clerical error was made in the aforementioned order. The last sentence of the original order reads as follows:

> "Counts 1, 2, 3, 4, 5, 6, 7, 8, 9 (as it relates to the University of Maine), 11, 12, 13 and 15 are dismissed."

It is ORDERED that the Judgment, last sentence, be amended to read as follows:

> "Counts 1, 2, 3, 4, 5, 6, 7, 8, 9 (as it relates to the University of Maine), 10, 11, 12, 13, 14 and 15 are dismissed."

Dated: 4/22/83

Justice, Superior Court

To: Dr. Oscar Weigang

President Howard R. Neville

From: Faculty Grievance Board of University of Maine at Orono
Council of Colleges

26 December 1978

IN THE MATTER OF OSCAR WEIGANG

FRAMING THE ISSUES

The Grievance Board perceives the issues before it to be:

1. Whether this Board should consider Oscar Weigang's removal as Chairman of the Department of Chemistry.

2. Whether Oscar Weigang was rightfully deposed as Chairman of the Department of Chemistry.

3. Whether Oscar Weigang was rightfully dismissed from the faculty of the University of Maine.

Since these decisions are interrelated, we will discuss each in turn.

ISSUE NUMBER ONE: Should the Board consider the removal of Oscar Weigang as chairman?

The preamble to the Grievance Procedures in Information for the Faculty states that: "Faculty . . . are provided grievance procedures that are intended to produce fair and equitable /emphasis added/ decisions with respect to their grievances. Taking the university at its word of intending fairness and equity, we feel compelled to entertain the question of whether Oscar Weigang was properly deposed as Chairman of the Department of Chemistry. Otherwise, the question would never receive a peer review. We feel it to be of the utmost importance to both faculty and the institution that questions of this type receive peer review if it is requested. Also, the question of dismissing Oscar Weigang, the chairman, and Oscar Weigang, the professor, are so interwoven as to cause and effect as to be non-severable. Further, though an argument was made that Oscar Weigang waived the right to bring his grievance concerning the chairman question before a Grievance Board, we feel it more worthy and compassionate of this institution not to raise technical barriers to the resolution of this question of professional employment. Fundamental fairness requires this board to consider this issue, and we so rule.

ISSUE NUMBER TWO: Was Oscar Weigang rightfully deposed as Chairman of the Chemistry Department?

It is the opinion of the Board that Oscar Weigang was rightfully deposed as Chairman of the Department of Chemistry.

From the outset, Professor Weigang's role as chairman concerned two areas of responsibility: to the Chemistry Department and to the university as a whole, as represented by the administration. The basis of the university is a social contract whose fundamental characteristic is the principle of collegiality. Professor Weigang's stewardship of the Chemistry Department, his treatment of the resources of the department, both human and material, violated this social contract.

His conduct as faculty leader and colleague was unprofessional and void of those attributes required for the constructive and productive operation of the department. His leadership deteriorated to the point at which this mission of the department was jeopardized. All but one of the tenured members of the

department were in full revolt. His dealings with and treatment of the faculty, both individually and collectively, were both autocratic and cavalier. His interactions with the faculty were neither conciliatory nor receptive to constructive criticism. Rather than using the tenured members of the faculty constructively as a policy advisory committee to aid him in resolving departmental problems such as budget, grant proposals, and personnel matters, he instead disbanded the PAC as obstructionist, and acted unilaterally. Because of the urgent financial circumstances affecting the entire UMO community during the years of Professor Weigang's chairmanship, it was particularly incumbent upon him to consult with members of the department PAC to aid him in resolving a continuing budgetary crisis. He did not do so.

The dealings of Chairman Weigang with the administration can best be characterized as insubordinate and combative.

In the area of budget responsibility, for example, Dr. Weigang had a substantial deficit in the amount of over $26,000 for academic year 1975-76 in his department. Though budget management is the responsibility of a department chairman, the university apparently was reasonably forgiving on the basis that this was his first year and that he had inherited the budget as well as some difficult budget problems. However, it was made abundantly clear to Dr. Weigang that this kind of overrun could not be allowed to happen again. In spite of continued warnings about living within his budget, Dr. Weigang continued to spend at will, and completed his second academic year with a deficit in excess of $32,000. These substantial budget overruns occurred during a period of severe budget constraints, made apparent to all members of the UMO community, and potentially threatening to all of them.

This general pattern of behavior was also characteristic of Professor Weigang's handling of other administrative areas such as appointments and salary matters.

Given the above, the Board concludes that Oscar Weigang was rightfully deposed as department chairman.

ISSUE NUMBER THREE: Was Oscar Weigang rightfully dismissed from the faculty?

Oscar Weigang was originally appointed as both a department chairman and a tenured faculty member with the rank of professor. Thus, there was a dual appointment. All UMO faculty are expected to be involved in teaching unless released from this inherent professorial obligation as the result of specific negotiations. Thus, some chairmen may do no, or very little, teaching because of the scope of their administrative duties. Oscar Weigang was clearly in this category. However, once the term of chairmanship ends, either by expiration of the term, resignation, or removal for cause, the former chairman in this case reverts to his normal faculty status. Dr. Weigang was obliged to teach unless negotiations specifically indicated he was not. No such negotiations occurred either before he was hired as chairman or when he was removed. This is one of the clearest issues before the Board. After being deposed as chairman, Dr. Weigang was clearly obliged to teach. He was given the opportunity to assume a normal load of both lecture and laboratory courses with a choice of teaching elementary, intermediate, or advanced subject matter in his discipline and/or expertise. He refused. The Board, therefore, concludes that Oscar Weigang was rightfully dismissed from the faculty.

It is the opinion of the Grievance Board that the university has more than discharged its obligation to Dr. Weigang by providing him with a full semester's leave, at full pay, after two and one half years of service. Nevertheless, the Board views the dismissal of a tenured faculty member as a very serious matter. Accordingly, it recommends that Dr. Weigang be given one final opportunity to return to the Department of Chemistry, as a tenured member, by assuming the teaching responsibilities expected of the faculty, and that no further financial settlement should be extended. If Dr. Weigang should accept an offer of reinstatement, he should be required to relinquish any further suit against the university.

ADDITIONAL MATTERS:

There are additional matters which the Board wishes to address because they are of the utmost concern to all faculty. Indeed, the Board would be remiss not to address these matters.

First is the matter of Oscar Weigang's reappointment as chairman after an initial two year term. We find that there was no faculty involvement and that, had the faculty been consulted, most of the problems with which we have been concerned might well have been aired, debated, and resolved in some satisfactory manner. Instead, the college dean, the same dean who had had many difficulties with Dr. Weigang, perfunctorily signed a reappointment recommendation and forwarded it to the academic vice president and president, who in turn, endorsed the recommendation without question.

The Board is of the firm conviction that in matters of this nature it is absolutely essential that there be full faculty involvement.

The problems caused by administrative mishandling at the dean's level of Oscar Weigang's chairmanship continued at the next administrative level. The academic vice president followed procedures impeccably but failed to give direction to the Dean of the College of Engineering and Science, a dean who clearly required direction. In addition, the academic vice president had occasion to be more directly involved with the situation and chose not to be. For example, when Dr. Weigang submitted his resignation as chairman, at a time when the academic vice president believed (according to his own testimony) that the relationship between the chairman and his department could still be salvaged, the vice president chose not to respond in any way. Deans and department chairmen need and deserve the same guidance and constructive criticism as do probationary faculty. At the vice presidential level, more leadership and demonstrated compassion, earlier in the course of Dr. Weigang's difficulties, might have helped to encourage all members of the Chemistry Department to resolve their problems.

Even so, some responsibility rests within the Department of Chemistry. Faculty members of all disciplines have intellectual and social obligations to the ideals of a university as well as to their own teaching, research, and public service. As a community, the university must depend on the willingness of individuals to take and to hold responsible and considerate positions, to offer and to receive constructive criticism, and to serve as role models for students and citizens. The faculty members of the Department of Chemistry, faced with a difficult, arbitrary, and insensitive chairman, did not adequately challenge, engage, or constructively criticize him. They turned to upper administration for

aid and rescue instead of asserting their faculty prerogatives, and taking the initiative to work openly, directly, and constructively with the chairman to remold the department.

All members of the Faculty Grievance Board unanimously concur in all of the above.

Howard Foley
James Gallagher
Melvin Gershman, chairman
James Horan
Ruth Nadelhaft

UNIVERSITY OF MAINE

Board of Trustees

107 Maine Avenue
Bangor, Maine 04401
207 947-3456

REPORT OF TRUSTEE APPEALS COMMITTEE

In Re the Dismissal of Oscar E. Weigang, Jr.

The Grievant, Oscar E. Weigang, Jr. appealed his dismissal as a tenured professor at the Orono campus of the University of Maine.

The Grievant has availed himself of all procedures available to him at the campus level and before the Chancellor of the University of Maine. His appeal to the Trustee Appeals Committee is taken under a policy adopted by the Board of Trustees on December 4, 1974.

The Trustee Appeals Committee consisting of Francis A. Brown, Chairman; Stanley J. Evans; and Elizabeth S. Russell was appointed at the March 1979 meeting of the Board of Trustees of the University of Maine, following receipt of a telegram from the Grievant dated March 26, 1979 claiming his right to an appeal.

The Grievant claims that the evidence adduced before the campus Grievance Board "...nowise supports the recommendation of the Grievance Board and concurring decision of the President..." He further claims that the charges against him are not adequate cause for dismissal.

The Trustee Appeals Committee convened in Bangor on October 9, 1979 to hear the arguments of the Grievant and legal counsel for the University. The Grievant appeared pro se, his former legal counsel having withdrawn from the case.

Prior to the hearing of arguments, the Trustee Appeals Committee was furnished with the full transcript of the hearing before the Grievance Board, including all testimony and copies of all exhibits. The Committee further received, prior to hearing, briefs from the Grievant and University legal counsel, reply briefs from each party and additional briefs specifically addressing the issue of payment of the cost of providing the transcript of the previous hearing before the Grievance Board.

The Grievant and University legal counsel were each permitted to argue for an hour and each in turn was granted an hour for rebuttal.

REPORT OF TRUSTEE APPEALS COMMITTEE

(Page 2)

After consideration of the full record including the briefs and the arguments offered, the Trustee Appeals Committee:

1. Affirms the decision to dismiss Oscar E. Weigang, Jr. as a tenured professor of the University of Maine at Orono.

2. Finds that the cost of preparing the record of the full Grievance Board hearing is to be borne equally by the Grievant and the University in accordance with the provisions of the official "Faculty and Professional Grievance Procedures of the University of Maine" (effective date: September 1, 1977).

Dated: Oct. 22, 1979

UNIVERSITY OF MAINE
TRUSTEE APPEALS COMMITTEE

Francis A. Brown
Francis A. Brown, Chairman

Stanley J. Evans
Stanley J. Evans

Elizabeth S. Russell
Elizabeth S. Russell

STATE OF MAINE
PENOBSCOT, ss

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Law Docket No. Pen-83-132

OSCAR E. WEIGANG, JR.,

Plaintiff-Appellant

vs.

PAUL SILVERMAN, et al.,

Defendants-Appellees

NOTICE OF APPEAL
TO THE
SUPREME COURT OF THE UNITED STATES
(Sup. Ct. Rule 10.2-.4)

To the Clerk of the Law Court:

Notice is hereby given that the Plaintiff-Appellant Oscar E. Weigang, Jr. hereby appeals to the Supreme Court of the United States from the Order of the Law Court dated June 7, 1983, received and filed June 8, 1983 by you, ordering that the motion of appellant for relief from orders be denied. This appeal is taken pursuant to 28 U.S.C. § 1257, subparagraphs (1) and (2).

Dated this 8th day of July, 1983 in Macungie, Pennsylvania.

Oscar E. Weigang, Jr.

Oscar E. Weigang, Jr., Appellant pro se
168 Aster Road, A.O.
Macungie, PA 18062
AC 215 398-3613

AFFIDAVIT OF SERVICE

I hereby swear under penalty of perjury that on July 8, 1983 I served by mail with first-class postage prepaid a single copy of the foregoing Notice of Appeal on each of the following, who are all who are required to be served:

Madolyn M. Upton, Clerk
(Court possessed of the Record)
Penobscot County Superior Court
97 Hammond Street
Bangor, ME 04401

John M. R. Paterson, Esq.
Bernstein, Shur, Sawyer & Nelson
One Monument Square
Portland, ME 04101

Jeffrey T. Edwards, Esq.
Preti, Flaherty & Beliveau
443 Congress Street
Portland, ME 04101

Susan P. Herman, Asst.
Attorney General
State House Station 6
Augusta, ME 04333

John W. Ballou, Esq.
Mitchell & Stearns
One Merchants Plaza
Bangor, ME 04401-0702

Phillip D. Buckley, Esq.
Bruce C. Mallonee, Esq.
Rudman & Winchell
P. O. Box 1401
Bangor, ME 04401

Julio DeSanctis III, Esq.
Hall, DeSanctis & Schultz
20 Central Street
Bangor, ME 04401

Harold M. Nagopian
Box 81
Monroe, ME 04951

Fred E. Stafford
325 9th Street S.E.
Washington, D.C. 20003

William H. Browder, Jr.,
Assistant U. S. Attorney
P. O. Box 1196
Bangor, ME 04401

Francis C. Marsano, Esq.
Eaton, Glass, Marsano &
Woodward
P. O. Box 404
Belfast, ME 04915

Oscar E. Weigang, Jr.

Oscar E. Weigang, Jr., Plaintiff-Appellant pro se

Dated July 8, 1983

STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
DOCKET No. CV 82-499

OSCAR E. WEIGANG, JR.,)
)
Plaintiff)
)
vs.)
)
PAUL SILVERMAN, et al.,)
)
Defendants)

FILED AND ENTERED
DATE 4/6/83
ATTEST Penobscot Clerk's Office

NOTICE OF APPEAL
(Rule 73 M.R.Civ.P.)

WHEREAS, pursuant to Rule 54(b) of Maine Rules of Civil Procedure, this Court has expressly directed "entry of judgment ... as a matter of law" and determined there is no just reason for delay in that "it appears to a certainty that Plaintiff is entitled to no relief" from fewer than all of the parties to the above-entitled action by the Court's Decision and Order dated 3/7/83 [filed and entered 3/9/83] and its order to amend that judgment dated 3/23(?)/83 [filed and entered 3/29/83];

Notice is hereby given that the Plaintiff, Oscar E. Weigang, Jr., hereby appeals to the Law Court of the State from the foregoing order and its amendment insofar as it enters judgment for the defendants CHUN, GRIMES, BELMONTEIN, RUBIN, JACKNES, BROWNE, BEAULIEU, COX, ALLEN, CATY, DeDIMITIS, PIESHI (sic)[PIESKI], VENC, HAGOPIAN, and ALL UNIVERSITY OF MAINE PROFESSORS, EMPLOYEES, ADMINISTRATORS and TRUSTEES, each in their individual and official capacities.

Dated this 4th day of April, 1983 in Macungie, Pennsylvania.

Oscar E. Weigang, Jr.

Oscar E. Weigang, Jr., Plaintiff pro se, 168 Aster Road, A.O., Macungie, PA 18062 AC 215 398-3613

STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Law Docket No. _____

OSCAR E. WEIGANG, JR.,

Plaintiff-Appellant

vs.

PAUL SILVERMAN, et al.,

Defendants-Appellees

MOTION TO HEAR APPEAL ON THE ORIGINAL RECORD

Now comes Plaintiff-Appellant Oscar E. Weigang, Jr. and moves the Court to permit the appeal in the above-entitled matter to be heard on the original record pursuant to Rule 74C(f) of the Maine Rules of Civil Procedure, and in support of his motion states the following:

1. This matter comes to the Law Court upon entry of judgment for dismissal of Plaintiff's Complaint as to certain of the parties after a single oral hearing and conversion thereafter to proceedings for summary judgment pursuant to Rule 12(b), M.R.Civ.P., on the issue that Plaintiff is entitled to no relief in support of his claims as a matter of law or that the Complaint fails to state a claim upon which relief could be granted.

2. The findings and conclusions of law of the Superior Court based upon the entirety of those proceedings are all contained in the court's decision, orders, and judgments being appealed from and dated 3/7/83 and 3/23(?)/83.

3. As a consequence of the foregoing, the entirety of the record below is relevant and properly before this Court for consideration; transmission of the entire record on appeal has been requested.

4. Parties to this appeal have been served by Plaintiff with all papers required by him to be served according to Rules 5 and 7, M.R.Civ.P.

5. Plaintiff is a pro se litigant who, in the course of related litigation in Penobscot ss., Superior Court, Docket No. CR-80-760, was declared indigent by the Superior Court (Complaint, ¶ 96) and circumstances as to his personal finances have not materially changed since that time.

WHEREFORE, Plaintiff prays that the Law Court dispense with the requirement of any appendix prepared by the Plaintiff-Appellant and permit the appeal to be heard on the original record.

Dated this 4th day of April, 1983 in Macungie, Pennsylvania.

Oscar E. Weigang, Jr., Plaintiff-Appellant pro se
108 Aster Road, A.D.
Macungie, PA 18062
AC 215 398-3613

STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
DOCKET No. CV 82-499

OSCAR E. WEIGANG, JR.,
Plaintiff

vs.

PAUL SILVERMAN, et al.,
Defendants

REQUEST FOR
TRANSMISSION OF THE RECORD
(Rule 74A M.R.Civ.P.)

Plaintiff Oscar E. Weigang, Jr. having filed his Notice of Appeal in the above-entitled matter, he requests that the entire record on appeal be transmitted forthwith to the Law Court of the State pursuant to Rule 74A of Maine Rules of Civil Procedure, the transcript of proceedings already having been prepared and a part of that record, such transmission subject to any order of this Court pursuant to Rule 74A(e), M.R.Civ.P.

Dated this 4th day of April, 1983 in Macungie, Pennsylvania.

Oscar E. Weigang, Jr., Plaintiff pro se
168 Aster Road, R.D.
Macungie, PA 18062
AC 215 398-3616

STATE OF MAINE
PENOBSCOT, ss

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Law Docket No. Pen-83-132

OSCAR E. WEIGANG, JR.,

Plaintiff-Appellant

vs.

PAUL SILVERMAN, et al.,

Defendants-Appellees

MOTION FOR RELIEF FROM ORDERS
(Rule 60(b)(4) M.R.Civ.P.)

Pursuant to Rule 60(b)(4) of Maine Rules of Civil Procedure, Appellant Oscar E. Weigang, Jr. moves the Law Court to grant relief from the Court's orders in the above-entitled matter dated April 8, 1983, namely, the Order of Remand and the Order [denying motion to hear appeal on the original record], and the Order in the same matter dated May 13, 1983 [dismissing this appeal for failure to pay the filing fee] taken together with the letter of the Clerk of this Court dated April 8, 1983 [giving notice that dismissal would occur if fee not paid] by vacating each of those orders. In support of his motion Appellant states and cites as authorities the following.

1. Rule 60(b), M.R.Civ.P., provides that "[o]n motion and upon terms as are just, the court may relieve a party ... from a final judgment, order, or proceeding for the following reasons: ... (4) the judgment is void; ...."

2. Rule 1, M.R.Civ.P., provides that "[t]hese rules govern the procedure before a single justice of the Supreme Judicial Court in all suits of a civil nature .... These rules also govern the procedure in the Supreme Judicial Court when

sitting as a Law Court. They shall be construed to secure the just, speedy and inexpensive determination of every action."

3. The orders of April 8 and May 13, 1983 separately and collectively operate as a final judgment, satisfying the requirements for collateral orders within the exceptions to the finality rule under Cohen v. Beneficial Loan Corp., 377 U.S. 541 (1949). Hanley v. Evans, 443 A 2d 65, 66 (Me. 1982) (citing Northeast Investment Co., Inc. v. Leisure Living Communities, Inc., 391 A 2d 845, 849-51 (Me. 1976)); Harris Baking Co. v. Maine Employment Security Commission, 457 A 2d 427 (Me. 1983) (holding a certain remand to administrative agency not final order or appealable, but on precedent of Luchetti v. Luchetti, 445 A 2d 675 (Me. 1982) where examination of record did not reveal reasons for exception to finality rule).

4. The Order of Remand comes within the "small class" of decisions excepted from the final judgment rule by Cohen since that order "conclusively determines the ... question" explicitly raised in the Notice of Appeal, whether the docket entry and the order directing the entry, both as amended by the Superior Court (Appendix A), expressed "certification" of a judgment as final to fewer than all of the claims of parties as allowed by Rule 54(b), M.R.Civ.P., (Moses H. Cone Memorial Hospital v. Mercury Construction Corp., ___ U.S. ___ (1983), 51 LW 4156, 4159 (no basis to suppose that District Judge contemplated any reconsideration of his decision)), implicating whether the judgment entered was "certifiable" as final to at least a single substantive claim of multiple claims of the action in accordance with Cole v. Petersen Realty, Inc., 432 A 2d 752 (Me. 1981) (citing

Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 435 (1956) as to unavailability of certification for "single claim ... pressed on multiple grounds" and Bacon v. Penney, 418 A 2d 1136, 1139 (Me. 1980) as to unavailability of certification of partial adjudication of a single claim), and implicating whether appellate jurisdiction of this Court exists under Durgin v. Robertson, 428 A 2d 65, 67 (Me. 1981) (lack of final judgment, subject to ... exceptions, deprives [Law Court] of jurisdiction to hear an appeal therefrom), a matter the Court is obliged to consider for itself (Bacon, at 1138); and thus the Order of Remand also "resolve[s] an important issue completely separate from the merits" of the appeal and the action below that will be "effectively unreviewable on appeal from a final judgment". Moses H. Cone, at 4158, quoting Coopers & Lybrand v. Livesay, 437 U.S. 464, 468 (1978). Also, Northeast Investment, at 854 (where trial judge makes determination on documentary evidence and affidavits without oral testimony of witnesses, appellate court is free to make its own finding from the same evidence).

5. The Order denying Appellant's motion to hear the appeal on the original record and the Order dismissing the appeal for failure to pay the filing fee (if made within the Court's jurisdiction) or, in the alternative, the notice for the same also satisfy the Coopers criteria where the "important issue", Appellant's indigency, was raised for the Law Court in Appellant's motion. Paso Builders, Inc. v. Hebard, 417 P 2d 916 (Nev. 1966), citing 8 F.R.D. 143, 145 (main purpose in providing for an appeal on original papers is to save expense).

6. The finality of the Orders of April 8 and May 13, 1983 taken collectively is grounded also in that they put the Appellant "effectively out of court", going beyond termination as a "practical matter" for economic reasons to termination as a legal matter. Moses H. Cone, at 4158, n. 11. Rule 41(b)(3), M.R.Civ.P., provides that the Order of May 13, 1983 dismissing this appeal for failure to pay the filing fee does so with prejudice, the Order not stating the contrary. No alternative more suitable has been open to Appellant since for Appellant to have moved for voluntary dismissal under Rule 41(a)(1), M.R. Civ.P., would have prejudiced his rights under any possible future dismissal, that Rule providing that any future dismissal would operate "as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this state or any other state or the United States an action based on or including the same claim", and since Appellant reasonably expected, from what notice was given, that dismissal upon the Court's initiative would be without prejudice since merits of the appeal were never reached.

7. The judgment, order, or proceeding of any court is void "if the Court that rendered it ... acted in a manner inconsistent with due process of law". Wright and Miller, Federal Practice and Procedure: Civil § 2862, p 198; Northeast Bank N.A. v. Crochere, 438 A 2d 266, 268 (Me. 1981) (citing Warren v. Waterville Urban Renewal Authority, 290 A 2d 362, 365 (Me. 1972).

8. Though the orders of the Law Court were rendered upon initiation of an appeal to an "appellate court", provision for which court is not required by the Due Process Clause

of the 14th Amendment (Lindsey v. Normet, 405 U.S. 56, 77 (1972); Rice v. Amerling, 433 A 2d 388, 391 (Me. 1981)), each order and the orders collectively constitute a capricious and arbitrary denial of Appellant's access to the Law Court and perfection of his appeal as provided for by the State (cf., e.g., consideration accorded by this Court in Cole), thus violating the Equal Protection Clause of the 14th Amendment (Lindsey, at 77) in circumstances that implicate also the Due Process Clause of that Amendment. Mapp v. New Sun Yong, 426 U.S. 88, 100 (1976) ("equal justice under law" served by due process as well as by equal protection clauses); 16A Am. Jur. 2d, Constitutional Law, § 740.

9. The order remanding the case for further proceedings or "certification" pursuant to Rule 54(b), M.R.Civ.P., without notice and an opportunity to be heard that certification and certifiability as required were satisfied destroys Appellant's vested cause for appeal and, upon dismissal of the appeal with prejudice, disposes of Plaintiff-Appellant's case-in-chief of his vested cause of action. Gibbes v. Zimmerman, 290 U.S. 329, 332 (1933) (vested cause of action is property protected by requirement of due process); Link v. Wabash Railroad Co., 370 U.S. 626, 637 (1962) (Justice Black, dissenting: plaintiff's cause of action was his property, which was destroyed by dismissal with prejudice); Peaslee v. Pedco, Inc., 388 A 2d 103, 106 (Me. 1978) (due process requires that before a party can be deprived of property, must have notice and opportunity to be heard).

10. The Order denying Appellant's motion, raising the claim of indigency, to hear the appeal on the original record

denies Appellant due process and equal protection of the law under the 14th Amendment. Cf., Griffin v. Illinois, 351 U.S. 12, 18 (1956) (state's refusal to grant, without cost to indigent, certified copy of the entire record of criminal trial necessary for appellate review).

11. The Order dismissing the appeal with prejudice for failure to pay the filing fee (if made within the Court's jurisdiction) or, in the alternative, the notice that dismissal would occur if the fee were not paid denies Appellant's right to due process under the 14th Amendment in that institution of the fee by amendment of the Maine Rules of Civil Procedure effective April 1, 1983 occurred after a vested right of appeal had accrued (N.B., amendment to judgment filed and entered March 29, 1983); or, in the alternative, that the only notice to the Appellant of the institution of a filing fee occurred after his filing of a notice of appeal and amendments concerning such fees do not even appear in the most recent Maine Rules of Court, 1983 (West Publishing Co., 1983) ("With Amendments Received to March 15, 1983"). Fournier v. Fournier, 376 A 2d 100, 102 (Me. 1977) (legislature has no constitutional power to enact laws which impair vested rights or create personal liabilities); Welch v. Henry, 305 U.S. 134, 147 (1938) (taxation, which in nature or amount could not reasonably have been anticipated at time of voluntary act preceeding taxing statute, was denial of due process).

12. The foregoing claims of denial of due process of law and a claim of urgency in this matter are grounded also in that Plaintiff-Appellant has been afforded no means effective for

the State providing due process on the merits of his claims for redress first raised December 16, 1977. Appellant has suffered and by the remand of this Court will continue to suffer irreparable injury through loss, without just cause, of his liberty and withheld back pay, or in the alternative, through unnecessary delay for the award of damages in lieu of such pay, that would afford him counsel of his choice in various criminal and civil proceedings that are pending. Hampton, at 103 (due process has a substantive as well as a procedural aspect); Gibbes, at 332 (due process interest in vested cause of action gives right to redress by some effective procedure); Ortwein v. Schwab, 410 U.S. 656, 659 (1973) (filing fee requirements for state appellate court not denial of due process because "applellants have had hearings ... [on the merits] through which [they] have been able to seek redress"); County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 196 (1959) (on denial of promptness of decision, which is element of justice in all judicial actions; upon refusal to exercise jurisdiction); Barry v. Barchi, 443 U.S. 55, 66 (1979) (due process requires prompt disposition of outstanding issues between the aggrieved and the State); Mitchell v. W. T. Grant Co., 416 U.S. 600, 611 (1974) (postponement of the judicial enquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate; usual rule where only property right involved); Manley, at 66 (urgency of issue alone will justify review of collateral orders). The history of Appellant's attempts to secure redress of his grievance is found, in part:

in his Complaint and the proceedings below for this action;

in his formal complaint directed on September 14, 1981 to an agency of this Court, the Committee on Judicial Responsibility and Disability, and the responses thereto (Appendix B);

in the appeal to this Court, Law Docket No. Law-81-375, and the remand entered September 10, 1981, to which the Superior Court responded sua sponte, thereby preventing compliance with the preconditions of the remand order for restoration of the appeal by also leaving pending and unheard the Appellant's Motion for Immediate Disposition (Appendix C); and

in the responses to Appellant's requests for assistance from the Governor and various agencies of the State (Maine Human Rights Commission [request made upon referral by State Legislator], Pine Tree Legal Assistance, Inc., and Maine Labor Relations Board) (Appendix D).

WHEREFORE, Appellant prays the Court to:

Vacate its Order of Remand entered April 8, 1983, its Order entered April 8, 1983 denying Appellant's motion to hear this appeal on the original record, and its Order entered May 13, 1983 dismissing this appeal with prejudice for failure to pay the filing fee;

Allow the appeal to proceed forthwith and be perfected as from a collateral order suitably certified and certifiable pursuant to Rule 54(b) of Maine Rules of Civil Procedure; and

Allow the appeal to be heard on the original record and without payment of filing fees upon Appellant's showing of indigency by a petition addressed to this Court.

Dated this 25th day of May, 1983 in Macungie, Pennsylvania.

Oscar E. Weigang, Jr., Plaintiff-Appellant pro se
168 Aster Road, A.C.
Macungie, PA 18062

(215) 398-3613

App. A

STATE OF MAINE

PENOBSCOT, ss.

SUPERIOR COURT
Civil Action
Docket No. CV 82-499

FILED AND ENTERED
DATE 5/13/83
Attest: Gillian Gay Deputy

OSCAR E. WEIGNG, JR., Plaintiff,

v.

PAUL SILVERMAN, ET AL, Defendants

DECISION AND ORDER

This case came on for hearing on numerous Motions to Dismiss filed by various defendants in this case. The Court heard arguments and is now considering Motions filed on behalf of all University of Maine administrators and employees, Marshall T. Cary, Ian MacInnes, Robert L. Browne, Eugene Beaulieu, David Cox, R. Christopher Almy, Gordon R. Grimes, George M. Shur, Sumner T. Bernstein, Harold J. Rubin, Julio De Sanctis, Harold Hagopian, Ronald Vend and William Pieske.

After the hearing on December 22, 1982, the Court issued an Order in which it stated that each party would submit an affidavit as the Motions to Dismiss were converted into Motions for Summary Judgment. On January 5, 1983 the Court received a letter from counsel representing defendants Grimes, Shur, Bernstein and Rubin in which a request was made that the Motion to Dismiss as to those defendants not be converted. As to all other defendants, the Motion to Dismiss has been properly converted as matters outside the pleadings have been submitted for consideration.

After careful review of all allegations in the Complaint related to the aforementioned defendants and the affidavits, the Court finds that the complaint either fails to state a claim upon which relief could be granted, or in the situations where affidavits have been submitted, compels the entry of judgment for the defendant as a matter of law. Although this Court recognizes its obligation to remain flexible when reviewing complaints filed by pro se litigants, it must nonetheless act to

App A

dismiss when it appears to a certainty that plaintiff is entitled to no relief in support of his claim. See Branson v. Chester L. Jordan & Co., 379 A.2d 730 (Me. 1977). If the Court held otherwise it would place itself in the position of acting as counsel for the plaintiff.

Accordingly, the entry shall be:

It is hereby ORDERED that defendants Shur, Grimes, Bernstein and Rubin's Motion to Dismiss is granted. Counts 7, 10, 12, 13, 14 and 15 of Plaintiff's Complaint are dismissed as to defendants Shur, Grimes, Bernstein and Rubin. It is ordered that defendant Ian MacInnes's Motion for Summary Judgment is granted. Judgment is entered for the defendant Ian MacInnes and against the plaintiff on Counts 10, 13 and 15 of the Complaint. It is ordered that defendant Robert L. Browne's Motion for Summary Judgment is granted. Judgment is entered for the defendant Robert L. Browne on Counts 10, 13 and 14 of the Complaint. It is ordered that defendant Eugene W. Beaulieu's Motion for Summary Judgment is granted. Judgment is entered for the defendant Eugene W. Beaulieu and against the plaintiff on Counts 10, 13 and 15 of the Complaint. It is ordered that defendant David A. Cox's Motion for Summary Judgment is granted. Judgment is entered for the defendant David A. Cox and against the plaintiff on Counts 13 and 15 of the Complaint. It is ordered that defendant R. Christopher Almy's Motion for Summary Judgment is granted. Judgment is entered for the defendant R. Christopher Almy and against the plaintiff on Counts 13 and 15 of the Complaint. It is ordered that defendant Marshall T. Cary's Motion for Summary Judgment is granted. Judgment is entered for the defendant Marshall T. Cary and against the plaintiff on Count 10 of the Complaint. It is ordered that defendant Julio DeSanctis's Motion for Summary Judgment is granted. Judgment is entered for the defendant Julio DeSanctis and against the plaintiff on Count 5 of the Complaint. It is ordered that defendants Pieski, Veno and Hacopian's Motions for Summary Judgment are granted. Judgment is entered for the defendants Pieski, Veno and Hacopian on Count 7 of the Complaint. It is ordered that the Motion to Dismiss filed on behalf of all University of Maine professors, employees, administrators and trustees is granted. Counts 1, 2, 3, 4, 5, 6, 7, 8, 9 (as it relates to the University of Maine), 11, 12, 13 and 15 are dismis

Dated: 3/7/83

William E. McKinley
Justice, Superior Court

App.

STATE OF MAINE

PENOBSCOT, ss.

SUPERIOR COURT
Civil Action
Docket No. CV 82-499

FILED AND ENTERED
DATE
ATTEST
CLERK

OSCAR E. WEIGANG, JR.,

Plaintiff,

v.

PAUL SILVERMAN, ET AL,

Defendant.

ORDER TO AMEND JUDGMENT

On March 7, 1983, the Court entered judgment on the complaint in this case. Counsel for all University of Maine defendants has moved to amend the Court's Order.

The Court notes that pursuant to Rule 60(a), M.R.Civ.P., a clerical error was made in the aforementioned order. The last sentence of the original order reads as follows:

> "Counts 1, 2, 3, 4, 5, 6, 7, 8, 9 (as it relates to the University of Maine), 11, 12, 13 and 15 are dismissed."

It is ORDERED that the Judgment, last sentance, be amended to read as follows:

> "Counts 1, 2, 3, 4, 5, 6, 7, 8, 9 (as it relates to the University of Maine), 10, 11, 12, 13, 14 and 15 are dismissed."

Dated: 1/23/83

Justice, Superior Court

App. B

168 Aster Road, A. D.
Macungie, PA 18062
September 14, 1981

Prof. David D. Gregory, Secretary
Committee on Judicial Responsibility
and Disability
Law School of the University of Maine
Portland, ME 04103

RE: Complaints concerning performance or misconduct of judges on the courts of the State of Maine

Dear Professor Gregory:

The Complainant in these matters is Oscar E. Seigang, Jr., pro se litigant as Defendant in the case University of Maine v. Oscar E. Seigang, Jr., civil action no 80-483 in the Superior Court of Penobscot County. He submits this complaint pursuant to paragraph 6 of the order of the Supreme Judicial Court of Maine dated June 26, 1978 and establishing a Committee on Judicial Responsibility and Disability. His complaint regards the performance and conduct at least of Justices Robert L. Browne and Jessie H. Briggs of the Superior Court, Judge E. J. Beaulieu of the Maine District Court for the Third District, all of Penobscot County, and an unidentified justice of the Superior Court of Cumberland County, all presiding in the above or related actions.

The Complainant alleges conduct by the above-named judges that substantially falls short of the standard of Canon 3 of the Code of Judicial Conduct, effective April 1, 1974: "A judge should perform the duties of his office impartially and diligently." More specifically under A. Adjudicative Responsibilities of Canon 3:

> (1) A judge should be faithful to the law and maintain professional competence in it. ....
>
> (3) A judge should be patient, dignified, and courteous to litigants ... and should require similar conduct of lawyers subject to his direction ....
>
> (4) A judge should accord to every person ... in a proceeding ... full right to be heard ..., he should not permit ex parte communication intended to influence his judicial action.
>
> (5) A judge should dispose promply of the business of the court.

Civil action no 80-483 seeks injunctions to restrain the Defendant, and Complainant here, from "any ... conduct which interferes with the orderly administration of the University of Maine at Orono." In brief summary, the action was brought August 27, 1980 by the University of Maine, a petition by Defendant for removal of the action to the U. S. District Court was entered August 29, 1980, that petition denied by a judgment subsequently appealed to the First Circuit of the U. S. Court of Appeals, that appeal dismissed by an order entered in the First Circuit on October 29, 1980, a preliminary injunction issued by the Superior Court on September 17, 1980, a counterclaim seeking injunctive relief filed by the Defendant on January 16, 1981, and an application seeking to vacate an arbitration award was filed by the Defendant on May 13, 1981. The Defendant appealed to the Law Court the judgment denying that application and the Law Court on September 9, 1981 remanded the action to the Superior Court for further proceedings.

The Complainant recognizes that a number of matters he raises are properly issues (and causes) for an appeal which he may eventually re-institute, and will surely undertake. But he has been presented with a virtual impasse to disposing of the action, in direct contravention to Canon 3 A (5). The original matter of the action, enjoining the Defendant, has by the Superior Court order of September 17, 1980 been relegated for determination of the merits of the case to the Federal Court in an action there (and where the University of Maine itself, at least, claims to no longer be a party to the action) while at the same time the Superior Court has been unwilling to relinquish its jurisdiction during attempts to remove and appeal the removal remand in the Federal Courts. Meanwhile, the Federal Court action which will determine the merits languishes while awaiting the appointment of a second judge for the U. S. District Court, District of Maine. As to Complainant's counterclaim and application to vacate an arbitration award, it has now become apparent that an appeal cannot be initiated without appearing again before Justice Briggs of the Superior Court. Justice Briggs threatens the Complainant with court costs and attorney's fees if he appears again in the matter

Whether Complainant has or has not eventual, practical recourse in the courts he calls attention of this Committee to the following matters that relate to his allegations of misconduct and performance below the standard of the Judicial Code.

(1) Without meeting the requirements of Rule 65 (a) (1) and (2), an un-identified justice of the Superior Court of Cumberland County nevertheless issued a Temporary Restraining Order on August 28, 1980.

(2) Without consent (as a matter of record) as required by Rule 65 (f), M.R.Civ.P, Justice Browne accepted the application for an injunction originally presented to the Superior Court justice of Cumberland County.

(3) The Temporary restraining Order having been issued without notice, and the requirement of Rule 65 (a), M.R.Civ.P being that in such case "the matter takes precedence of all matters except older matters of the same character", the motion for a preliminary injunction nevertheless was not heard until September 17, 1980. Again, without meeting the requirements of Rule 65 (a) as to good cause shown, the restraining Order was extended to that date.

(4) In the hearing of September 17, 1980 for a preliminary injunction Justice Browne refused to conduct any portion of the hearing in argument to the end of determining whether Plaintiff was likely to succeed on the merits in any trial for a permanent injunction. Instead Justice Browne received and accepted ex parte information on the merits of the dismissal from the University of the Defendant as contained in a Memorandum in Support of Issuance of a Preliminary Injunction. The Order of that date states that the Court "is satisfied that for the purposes of this motion the dismissal of the Defendant from Plaintiff's employ was proper and final".

(5) Though precedent was cited and quoted in the hearing that "issues of constitutionality must be accorded full hearing, where all parties have opportunity to fully develop complete factual background, and to full brief and argue their respective positions"(UV Industries, Inc. v. Posner, 406 F.Supp. 1251, 1252 n. 6), the hearing took no meaningful regard for constitutional issues raised in Defendant's Answer already filed with the Court

(6) During Defendant's examination of Plaintiff's witnesses to determine the nature and extent of "disruption to the orderly administration of the University", Justice Browne sustained numerous objections by Plaintiff's attorney without regard for reason, indeed before any reason, if any, was given by that attorney.

App B

(7) Without regard for Rule 65 (b) (2) that provides "evidence received upon an application for a preliminary injunction ... becomes part of the record on the trial [on merits]" and the Rule's obvious contemplation that the trial take place in the same action, the Order of September 17, 1980 relegates the whole issue of merits to trial before the Federal Court (Order, 3rd paragraph). The preparation of the actual order in those terms for the signature of Justice Browne, obviously prior to the hearing, was an ex parte communication intended to influence judicial action.

(8) JudgeBeaulieu in a hearing on criminal trespass charges against the Complainant (CR 80-80-4Cbe, District Court) arising from the civil Order of the Superior Court of September 17, 1980 accepted but then perfunctorily dismissed a motion raising defenses and objections in accord with Rule 12 (b) (2) of D.C.Crim.R. without a substantive hearing of the defenses and objections. Judge Beaulieu further took no interest in information that the Defendant had filed a petition of habeas corpus with the U. S. District Court, though Defendant could have necessarily raised Constitutional issues in such a petition that could be denied for other reasons. Such hearing was held November 6, 1980.

(9) In the hearing on December 8, 1980 on Plaintiff's Motion for Sanctions for Violation of Injunction, Justice Brown failed to take any action in response to six motions to dismiss those proceedings, motions which raised substantial questions of jurisdiction, validity of the injunction, adequacy of the claim, adequacy of the proceedings, nor did he respond to a demand for jury trial, all previously filed with the Court. Justice Briggs failed to take any action or provide any hearing on them, though some were pertinent to the proceedings continued under her.

(10) On March 19, 1980 Justice Briggs failed to give any hearing at all to Defendant's Motion for Immediate Disposition though sufficient notice had been served on Plaintiff's attorney and the motion was scheduled for hearing by the Court.

(11) On the same date Justice Briggs denied a request to file a supplemental pleading for a reason completely extraneous to the grievance of the request, viz., that Defendant had acquired a claim subsequent to the service of Defendant's Answer of September 15, 1980. The reason given by Justice Briggs was that the separate, proposed pleading "fails to state understandable claim". The very same pleading and its claim had obviously passed the scrutiny of the U. S. District Court, and most likely that of the first Circuit Court of Appeals, without such an objection being raised; and certainly not by the other party of the previous federal action.

(12) Justice Briggs in the hearing of March 19, 1980 complained of excessive use of Latin phrases in the proposed pleading, claiming to need a "course in Latin" to understand it, and stated that the "pleading must be simplified" before its re-submission would be allowed. The last requirement seemed to take no regard for the fact that it is beyond Defendant's capacity to simplify a matter complex from Plaintiff's previous actions. Justice Briggs further claimed that the pleading contained no prayer for relief, failing to notice and not allowing herself to be informed that only an alternate prayer of the original pleading had been deleted -- for the sake of simplicity. Throughout the hearing of March 19, the Plaintiff University of Maine stood ready to argue the pleading on its merits, and as a matter subject to immediate disposition, or at least participated in no claim that the pleading was not clear to the Plaintiff-Counterclaim Defendan

(13) On May 8, 1981 Complainant served his best attempt at "simplification" of the counterclaim, an Application for an Order Vacating Arbitration Award, significantly diminishing thereby his rights to an equitable resolution of his counterclaim under law before a court of justice. Justice Driggs in open court in a hearing on July 31, 1981 belittled the Application as "stupid", "dumb", or the like and allowed Plaintiff's lawyer to state that Defendant was "playing games with the courts" and "horsing around", or the like. Plaintiff's Memorandum filed for the hearing goes on in a similar vein, demeaning Defendant's Application and questioning the good faith of his actions. The Application was denied without a hearing that was commensurate with the subtlety of law and necessity of uncovering the pertinent facts in the matter.

(14) Justice Driggs apparently accepted for the hearing on July 31 an affidavit of Samuel J. D'Amico, an affidavit obviously in support of a Motion to Dismiss Application for Order Vacating Arbitration Award, though not served with the Motion as required by Rule 6 (d), M.R.Civ.P., and served so late as to preclude an opposing affidavit being prepared.

(15) Justice Driggs in the hearing of July 31, 1981 acted to intimidate the Complainant from continuing to maintain the court seeking adjudication of [illegible] in the above actions in a prompt and expeditious manner. The intimidation consisted of declaring, and [illegible] that court costs and attorney's fees would be assessed against Complainant whenever "further frivolous actions" were brought by him. Complainant's appeal to the Supreme Judicial Court, summarily remanded for further proceedings, is thus effectively subject to the same intimidation.

The Complainant does not claim that the list above exhausts all instances of misconduct and unsatisfactory performance by judges of the State of Maine that have dealt with him. He offers to supplement and detail as the scope of inquiry by the Committee requires, limited only by his incomplete knowledge of the rules and customary procedures of the courts of Maine.

Complainant is not enclosing supporting papers which are part of the public record for the various actions cited above. Nor has he attempted to secure transcripts of the hearings cited. Neither is specifically requested by the Order of June 26, 1978 establishing the Committee and Chairman Hampton has not informed Complainant of any additional rules concerning complaints to the Committee but take note that Complainant will furnish such material to support his complaint if the Committee requires such of the Complainant.

He looks forward to the soonest disposition of this matter by the Committee.

Very sincerely,

Oscar L. Wolfing, Jr.
Complainant

App J

COMMITTEE ON JUDICIAL RESPONSIBILITY AND DISABILITY

P O BOX 8038
PORTLAND, MAINE 04104

September 18, 1981

Mr. Oscar E. Weigang, Jr.
168 Aster Road, A.O.
Macungie, Pennsylvania 18062

Docket no. 33-SC-81

Dear Mr. Weigang:

This letter is to acknowledge receipt on September 16, 1981, of your letter dated September 14, 1981, containing a complaint against Honorable Jessie Briggs and other judges of the Maine Superior and District Courts. Your letter is being distributed to all members of the Committee on Judicial Responsibility and Disability. They will then decide whether the matters stated in your complaint are within the Committee's jurisdiction and, if so, what action, if any, should be taken. In the meantime, I enclose for your information a copy of a booklet containing the Committee's rules and several court orders pertaining to the Committee's jurisdiction and procedure.

Please note that this Committee cannot interfere with judicial proceedings or grant any remedies to private litigants. Issues which are properly within the province of the courts are ordinarily outside this Committee's authority.

Sincerely,

David D. Gregory
Secretary

DDG/jl
enc.

App E

COMMITTEE ON JUDICIAL RESPONSIBILITY AND DISABILITY

P O BOX 9058
PORTLAND, MAINE 04104

October 28, 1981

Mr. Oscar E. Weigang, Jr.
168 Aster Road, A.O.
Macungie, Pennsylvania 18062

Docket no. 33-SC-81

Dear Mr. Weigang:

This letter concerns your complaint against Honorable Jessie Briggs and a number of other judges of the Maine Superior and District Courts. Your complaint has been thoroughly considered by this Committee. (Because I am employed as a professor at the University of Maine School of Law I did not participate in the Committee's consideration of this matter or its decision. By this letter I am simply carrying out the Committee's decision.) The Committee has decided that your complaint does not state an adequate basis for a claim of judicial misconduct. Accordingly, this matter has been dismissed.

Your complaint arises from complex litigation taking place in both the federal and state courts. Various segments of the litigation have been heard by the United States District Court, the United States Court of Appeals, the Maine District Court, the Maine Superior Court, and the Maine Supreme Judicial Court. Throughout this litigation you have been representing yourself without the benefit of an attorney.

Virtually all of the allegations of your complaint amount to no more than claims of possible errors committed by the several judges who have presided at various stages of your litigation. You allege that a judge issued a temporary restraining order, that a judge extended the effective period of a restraining order, that a judge accepted an application for an injunction, and that a judge failed to hold a hearing on a preliminary injunction for about three weeks all in contravention of the Maine Rules of Civil Procedure. All of these issues are for the courts themselves to decide. Judges' decisions on these issues cannot simply be converted into claims of judicial misconduct, and the merits of the courts' decisions cannot be reviewed by this Committee. Claims of judicial error do not constitute allegations of judicial misconduct. Similarly, it is not misconduct for a judge to abstain or defer to action in another court when litigation is going forward in two courts. It is a common and useful

App

practice in Maine and elsewhere for attorneys to prepare proposed orders for submission to the court, and it is not misconduct for a judge to adopt one party's order. It is not misconduct for a judge to give but short shrift to arguments and pleadings which the court finds to be without merit. Thus, the courts' rulings on your six motions to dismiss, your "motion for immediate disposition," and your motion to file supplemental pleadings do not amount to misconduct. It is not misconduct if a judge requires that a pleading be simplified or states that a pleading contains an excessive use of Latin phrases.

The only allegation of your complaint which comes within this Committee's jurisdiction is that a judge characterized one of your pleadings as dumb or the like. The Committee is of the opinion that this allegation in context does not require investigation because, even if true, it would not constitute a significant violation of the Code of Judicial Conduct warranting disciplinary action.

Finally, the judge's statement that court costs and attorneys' fees would be awarded if further frivolous pleadings and actions were pursued is not judicial misconduct. On the contrary, the judge's statement appears to be designed to give fair warning to a pro se litigant of the potential adverse consequences of his actions. The heart of the problem here may be that a pro se litigant lacks the experience and perspective to enable him to know what is frivolous. Pro se representation may require judicial responses at the extremes in this sense. While a court must be specially sensitive to the efforts of pro se litigants because of their lack of expertise (while remaining impartial on the merits), the court may also be required to use stern language to bring home to pro se litigants the difference between acceptable actions and frivolous, burdensome, or wasteful actions. If a pro se litigant persists in pressing frivolous claims or arguments, it seems preferable that he first be warned before being visited with the consequences of his conduct.

Upon full consideration, the Committee has determined that your complaint is without merit and must be dismissed. Practically every claim of misconduct is not misconduct at all. At most the allegations show a possibility of error. In some cases the courts' actions complained of, so far from being misconduct, are commendable. The one claim of a pejorative characterization

App.

not of a person but of a pleading is too insubstantial to warrant formal disciplinary proceedings.

Please understand that this Committee cannot interfere in pending litigation or grant judicial remedies or change a judge's decision. The Committee is not one more court of last resort.

Sincerely,

David D Gregory
Secretary

DDG/jl

App. C

STATE OF MAINE
PENOBSCOT, S.S.

SUPERIOR COURT
Civil Action
Docket No. 80-483

UNIVERSITY OF MAINE,
Plaintiff

vs.

OSCAR E. WEIGANG, JR.,
Defendant

NOTICE OF APPEAL
(Rule 73 M.R.Civ.P.)

Notice is hereby given that Oscar E. Weigang, Jr., Defendant above named, hereby appeals pursuant to Title 14 of Maine Revised Statutes Annotated, § 5945 1. A. and 2. to the Law Court of the State from the orders of the Superior Court dated July 31, 1981 granting Plaintiff's Motion to Dismiss Application for Order Vacating Arbitration Award and denying Defendant's Application for an Order Vacating Arbitration Award.

Dated in Macungie, Pennsylvania this 24th day of August, 1981.

Oscar E. Weigang, Jr., Defendant in Person
168 Aster Road, A.D.
Macungie, PA 18062

App. C

80-483.

STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Law Docket No. Law-81-375

Filed and Entered
Date: 9/10/81

UNIVERSITY OF MAINE)
)
V.) ORDER OF REMAND
)
OSCAR E. WEIGANG, JR.)

WHEREAS the above-entitled appeal is now pending in the Law Court, and

WHEREAS under Rule 58, M.R.Civ.P., the notation of judgment on the civil docket pursuant to Rule 79, M.R.Civ.P., constitutes the entry of judgment, and

WHEREAS the notation of judgment in the instant case does not reflect any final judgment having been entered on the counterclaim,

Now, therefore, it is ORDERED that the case be remanded to the Superior Court for such further proceedings before the presiding Justice as are necessary to dispose of all pending claims; or, in the alternative, for a determination by the presiding Justice of the appropriateness of the entry on the docket of an order pursuant to Rule 54(b), M.R.Civ.P.

Upon completion of proceedings on remand, the case will be restored to the Law Court docket, subject to, and only in the event of appellants' compliance with the following conditions:

1. That appellants promptly, and in any event within the time provided by the rules, file their notice of appeal from the judgment entered pursuant to this order.

2. That appellants cause the record on appeal to be expanded to reflect all action taken in Superior Court subsequent to this remand and to be transmitted to the Law Court within 20 days of the filing of the notice of appeal required above.

Dated: September 8, 1981.

For the Court,

Chief Justice

STATE OF MAINE
CLERK OF THE COURT

SEP 9 1981

FILED AND ENTERED
DATE: 9/24/81
ATTEST:
CLERK

STATE OF MAINE
PENOBSCOT,ss

SUPERIOR COURT
Civil Action
Docket No. 80-483

UNIVERSITY OF MAINE

VS

ORDER

OSCAR E. WEIGANG, JR.

This matter was remanded from the Supreme Judicial Court for entry of a final judgment, due to the apparent pendency of a counterclaim. That Counterclaim was presented to the Court as an attachment to the "Request to file supplemental pleading", heard and denied on March 19, 1981, when the so-called "request" was treated as a motion to amend Defendant's Answer. The Counterclaim had and has no separate viability.

It is, therefore, ORDERED:

1. That the docket entries for January 16, 1981, be amended by deleting the first entry of that date, and by adding at the end of the second entry the following: "Proposed supplemental pleading entitled "Counterclaim--Injunctive Relief" filed by Defendant".

2. This Court's Order dated March 19, 1981, is amended for the purpose of clarification to read as follows: "Request to file supplemental pleading--Denied. Court finds the proposed pleading, entitled "Counterclaim-Injunctive Relief" fails to state understandable claim."

September 24, 1981

Jessie H. Briggs
Justice, Superior Court

App C

STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
Civil Action
Docket No. 80-483

UNIVERSITY OF MAINE,
Plaintiff

vs.

OSCAR E. WEIGANG, JR.,
Defendant

MOTION FOR IMMEDIATE DISPOSITION

Now comes the Defendant Oscar E. Weigang, Jr. and moves that the Court make immediate disposition of the above-captioned matter consistent with requests for injunctive relief where the well-being, safety and preservation of human life is threatened, that this motion be heard ex parte and immediately; and in support of his motion Defendant states that documents on file in this action support alleged threats to human life and safety as follows:

1) Answer to Plaintiff's Complaint, Exhibit B, A Brief of Argument, page 19:

> ...[There was] testimony [under oath by Dr. P. L. Goodfriend] t at he took the initiative to convey concerns about [Oscar E. Weigang, Jr.] being the source of "threatening phone calls [to Dr. Goodfriend and his family]...threatening death";

the truth and accuracy of this Brief of Argument has been sworn to under oath by Defendant Oscar E. Weigang, Jr. in an affidavit accompanying a motion for Summary Judgment in Civil Action 80-1111-B before United States District Court of the District of Maine.

2) Answer to Plaintiff's Complaint, Exhibit A, Letter from Henry O. Hooper to Dr. Robert Dunlap dated August 20, 1980: "We believe that Oscar has no interest or intent to harm anyone so I expect no confrontation."

3) Answer to Plaintiff's Complaint, Exhibit A, A two-page letter from Oscar E. Weigang, Jr. to James L. Clapp dated August 25, 1980 (same as Exhibit 1,

submitted by University of Maine in support of Motion for Preliminary Injunction):

> ...It is unfortunate that the University has already raised unsubstantiated and prejudicial claims that my presence might be connected with "intent to harm anyone".

WHEREFORE, Defendant moves that, after ex parte hearing of this motion, an order of this Court issue for immediate hearing and proceedings to dispose of the matter of a Permanent Injunction in the above-captioned Action.

Dated in Bangor, Maine this 26 day of January, 1981.

Oscar E. Weigang, Jr., Defendant Pro Se
c/o Michael Weigang
Thurston's Trailer Park, # 13
Kirkland Road
Old Town, ME 04468

FILED & ENTERED
Date: 3/19/81
Attest: [illegible]

State of Maine

Penobscot, ss.

SUPERIOR COURT
CV- 80-483

University of Maine

Plaintiff

v.

Defendant

Oscar Weigang

ORDER

This cause came on for hearing, and was argued by counsel, upon the motion of the Defendant

For Immediate Disposition and Defendant's Request To File Supplemental Pleading

IT IS ORDERED, ADJUDGED AND DECREED that:

3/19/81 Def's Request to file supplemental pleading — Denied Court finds proposed pleading fails to state a counterclaim

Dated 3/19, 1981

Justice, Superior Court

CV-19, rev. 12/79

UNIVERSITY OF MAINE at Orono 4404 Patt Pitts TX 787
Department of Chemistry 431-3105 Registered Austin, Aubert Hall Maine 04473
471-7327 App. 1

Sept. 10, 1979

Governor Joseph E. Brennan
Governor's Office
Augusta, Maine

Brief Summary of Events, up to June 10

Dear Governor Brennan:

I direct to you the information below because I believe the State of Maine is ultimately responsible for financial obligations of the University of Maine. I trust that the Attorney General of Maine could provide a fair estimate of liability.

I was removed from the office of Chairman of the Department of Chemistry, UM-Orono ostensibly "for cause" less than three months into a renewed 3-year contract for that position.

Ten months later I refused to teach as ordered, pointing out as I had earlier that due process had not been provided nor had cause been established for removing me. Salary was stopped.

Three months later a faculty grievance board rendered the opinion, immediately after a short hearing, that a hearing should have been provided in the first instance.

It rendered the further opinion, without citing adequate cause, that I had been rightfully removed from the position of Chairman. No explanation of this contradiction was provided.

It rendered the opinion also that I therefore had had no right to refuse to teach and could be dismissed as a tenured faculty member of the University. No explanation of this further contradiction was provided.

The President of the Orono campus chose to concur with these recommendations in making his decision. I was dismissed as a tenured faculty member retroactive to a date almost three months before his decision.

The Office of the Chancellor found no substantial error in the procedure.

The Board of Trustees contemplates a review of the grievance board hearing record, a verbatim record by professional court recorders. A date has yet to be set because a transcript of the grievance board record has yet to be put in written form. Set for Oct 9, 1979, Caucus Me

The recommendation of the grievance board, the decision of the President (not a party in the hearing process), and the review by the Chancellor have all

App. D

UNIVERSITY OF MAINE at Orono

Department of Chemistry

Aubert Hall
Orono, Maine 04473

letter to Governor Brennan (continued)

proceeded without benefit of referral to the written record of the grievance board proceedings.

Eighteen months have passed since I was, ostensibly, removed as Chairman, nine months have passed since salary was stopped, seven months have passed since I was, ostensibly, dismissed as a tenured faculty member, six months have passed since a hearing was convened, five months have passed since the President rendered his decision, more than two months have passed since the Trustees accepted my appeal. The University and its representatives have been negligently and prejudicially dilatory at nearly every step of procedure.

I have been repeatedly offered settlements that are inconsequential compared to the damages accruing from allegations and actions that purport "sufficient cause" (as defined by University of Maine regulations) ever existed to remove me as a Chairman or a tenured faculty member. These offers have always required that I waive any future claims in these matters.

I believe the State of Maine has reason to examine whether it has been well-served by its agents in these matters.

Very sincerely,

Oscar E. Wolfgang, Jr.

xc: Clark to Wolfgang (10/31/77)
Clark to Wolfgang (12/16/77)

App. D
51

State of Maine
Executive Department
Augusta Maine
04330

JOSEPH E BRENNAN
GOVERNOR

June 18, 1979

Oscar E. Weigang, Jr.
287 Aubert Hall
University of Maine
Orono, Maine 04473

Dear Dr. Weigang:

This is in reply to your letter to the Governor and subsequent phone call regarding your removal from your position at the University of Maine.

I have been informed that you have been following the appeals procedures available under the University of Maine Board of Trustee guidelines. I trust you will understand that the appeals process and actions of the University Board of Trustees in this respect are not within the purview of the Governor.

Sincerely,

O. E. Weigang

Oz Zengur,
Assistant to the Governor

OZ:mas

App. D

State of Maine
Executive Department
Augusta, Maine
04330

JOSEPH E. BRENNAN
GOVERNOR

July 31, 1979

Oscar E. Weigang, Jr.
360 Stillwater Avenue
Old Town, Maine 04468

Dear Dr. Weigang:

I am writing to inform you of my findings relative to your appeal to the University of Maine Board of Trustees regarding your dismissal from the University of Maine at Orono.

As I explained to you when we met, there is not much that the Governor's office could do to expedite your appeal. The University of Maine Board of Trustees are in an independent body over which the Governor has no direct control. However, as promised I did look into the situation to see whether I could determine the reasons for the apparent delay in hearing your appeal.

The Board of Trustees has informed me that you appealed to the Board on March 26, 1979. On March 28, 1979 the chairman of the Board appointed a three-member trustee committee to review the case and consider the appeal. The Board informs me that on April 18 you were notified that the two court reporters present at the campus hearings had been directed to prepare a transcript of the proceedings. As you know, they told you that the preparation would require more than two months. The Board informs me that unfortunately the preparation of the transcript has been progressing more slowly than expected. The Trustee Committee will begin its review as soon as the transcript of the campus hearing is available. The Board assured me that the University is as anxious as you are to bring this matter to a conclusion.

From my correspondence with the Board of Trustees it does not appear that they have been unreasonably delaying the matter of your appeal. I understand the difficult financial and personal problems this process has created for you. However, I have been assured by the Board of Trustees that they will act upon your case as soon as possible.

Sincerely,

Oz Bengur

Oz Bengur,
Assistant to the Governor

OB:mas

MAINE HUMAN RIGHTS

STATE HOUSE AUGUSTA, MAINE
207 289 2326 04333

Governor
JOSEPH E. BRENNAN

Commissioners
DAVID W. KEE
MEREDITH RING
IRVING B. FAUNCE
NORMAN L. FOURNIER Chair
MARY STEWART SPENCE

Executive Director
PATRICIA E. RYAN

July 19, 1979

Dr. Oscar Weigang
4404 Red River
Austin, Texas 78751

RE: Letter dated July 16, 1979

Dear Dr. Weigang:

I am in receipt of a copy of your letter to Governor Brennan regarding your complaint against the University of Maine. While the concerns you raised as to the length of time taken to process your grievance certainly appear to warrant explanation, the Maine Human Rights Commission has no standing to intervene on your behalf. Our areas of jurisdiction as clarified by statute, limit our scope of activity to matters involving race, color, sex, religion, ancestry, national origin, age, physical or mental handicap. Thus, if an individual believes that he or she has been discriminated in employment, housing, public accommodations or credit extension on the basis of the above protected classes, that person may proceed to file a complaint with this agency within 6 months of the date of the alleged discrimination.

Although the time frame involved in processing your complaint has been inordinately long; again, we would have no jurisdiction to take action. Please do not hesitate to call if you wish further clarification of the Maine Human Rights Act. I have enclosed a copy, plus the Commission's Employment Guidelines for your information.

Sincerely yours,

Patricia E. Ryan

Patricia E. Ryan
Executive Director

c.c. Representative Lawrence Connolly

Enclosures

PER/lmb

App. D

PINE TREE LEGAL ASSISTANCE, INC.
COE BUILDING, ROOM 53
61 MAIN STREET
BANGOR, MAINE 04401
TELEPHONE (207) 942-8241

July 20, 1979

Mr. Oscar Weigang
362 Stillwater Avenue
Old Town, Maine 04468

Dear Mr. Weigang:

The staff of this office met and considered your recent request for legal assistance from this office in the matter of your discharge from the University of Maine faculty.

It is the decision of the staff of this office that we are unable to represent you at this time. The nature of your case against the University is such that if you are successful, you will be entitled to a substantial award of back wages. This type of damage claim would be fee generating, in that a private attorney should be willing to take your case on a contingent fee basis. I would suggest that you return to the private attorney who has been representing you to determine whether he would be willing to do it on a contingent fee basis, and, if not, you should contact other private attorneys to attempt to work out such an arrangement.

Second, since this matter has been proceeding administratively for almost a year now and you have been represented by a private attorney throughout this period of time, it would be extremely difficult for this office to get involved in this matter at such a late stage. I would urge you to attempt to come to some agreement with your private attorney so that he would continue to represent you.

Third, in addition to the above reasons, it is doubtful that you, due to your background, education, and earning capacity, fall within our guidelines for free representation.

App. D

Mr. Oscar Weigang
July 20, 1979
Page Two

If you have any questions concerning this letter, or wish to contest the decision of the staff, you may contact the undersigned at your convenience.

Sincerely yours,

John Whitehouse Cobb
Attorney at Law

JWC/bll

EDWARD H. KEITH
Chairman
DON R. ZIEGENBEIN
Employer Representative
WALLACE J. LEGGE
Employee Representative

PARKER A. DENACO
Executive Director

App. D

STATE OF MAINE

MAINE LABOR RELATIONS BOARD

STATE OFFICE BUILDING

AUGUSTA, MAINE 04333

TELEPHONE 289 2015

August 20, 1979

Mr. Oscar Weigang
362 Stillwater Avenue
Old Town, Maine 04468

Dear Mr. Weigang:

I have been unable to locate the additional materials from my files relating to union representation. However, most of them were cases which have been reported in one form or another in the labor relations reporting services which can be found at most large libraries or in law libraries.

I trust things will work out well for you.

Sincerely yours,

Robert I. Goldman

Robert I. Goldman

RIG/rap

AFFIDAVIT OF SERVICE

I hereby swear under penalty of perjury that on July 18, 1983 I served by mail with first-class postage prepaid a single copy of the foregoing Appendix to Jurisdictional Statement on each of the following, who are all who are required to be served:

Jeffrey T. Edwards, Esq.
Preti, Flaherty & Beliveau
443 Congress Street
Portland, ME 04101

The Attorney General
Susan P. Perman, Asst. Attorney General
State House Station 6
Augusta, ME 04333

John W. Ballou, Esq.
Mitchell & Stearns
One Merchants Plaza
Bangor, ME 04401-0702

John M. R. Paterson, Esq.
Bernstein, Shur, Sawyer & Nelson
One Monument Square
Portland, ME 04101

Julio DeSanctis III, Esq.
Hall, DeSanctis & Schultz
20 Central Street
Bangor, ME 04401

Phillip D. Buckley, Esq.
Bruce C. Mallonee, Esq.
Rudman & Winchell
P. O. Box 1401
Bangor, ME 04401

Francis C. Marsano, Esq.
Eaton, Glass, Marsano & Woodward
P. O. Box 404
Belfast, ME 04915

Harold M. Hagopian
Box 81
Monroe, ME 04951

Oscar E. Weigang, Jr.

Oscar E. Weigang, Jr., Appellant pro se

Dated July 18, 1983

RECEIVED
JUL 18 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 83-5072

in the

SUPREME COURT OF THE UNITED STATES

October Term, 1982

OSCAR E. WEIGANG, JR.,

Appellant,

v.

PAUL SILVERMAN, et al.,

Appellees

On Appeal
from the
Supreme Judicial Court of the State of Maine

MOTION TO PROCEED IN FORMA PAUPERIS

Oscar E. Weigang, Jr.
168 Aster Road, A.O.
Macungie, Pennsylvania
18062
(215) 398-3613

Pro Se

MOTION TO PROCEED IN FORMA PAUPERIS

Appellant Oscar E. Weigang, Jr. moves the Court that he be allowed to proceed in the above-entitled matter in forma pauperis without being required to prepay any fees, costs or give any security and that he be allowed to file papers and documents as prescribed by Rule 46 of the Rules of this Court.

Appellant previously has sought leave to proceed in forma pauperis in the courts below. The U. S. District Court for the District of Columbia granted the request March 5, 1982 for docketing appeal No. 82-1241, Weigang v. Smith. The Superior Court for Penobscot County, State of Maine granted a request January 5, 1981 to proceed with court-appointed counsel in CR 80-760, State of Maine v. Weigang, stipulating in open court to the effect that the Appellant may be asked at some future date to re-imburse the State of Maine.

In further support of his motion, Appellant appends and incorporates by reference his affidavit in the form prescribed by Federal Rules of Appellate Procedure, Form 4, adapted to the circumstances.

Respectfully submitted,

Oscar E. Weigang, Jr., Appellant
pro se
168 Aster Road, A.O.
Macungie, Pennsylvania
18062
(215) 398-3613

Dated: July 18, 1983

AFFIDAVIT IN SUPPORT OF
MOTION TO PROCEED IN FORMA PAUPERIS

I, Oscar E. Weigang, Jr., hearby swear under penalty of perjury that I am the Appellant in the above-entitled matter, that in support of my motion to proceed without being required to prepay any fees, costs or give any security, I state that because of my poverty I am unable to pay the costs of said proceedings or to give security therefor, and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of said proceedings are true.

1. Are you presently employed?

No. Appellant was last employed January 15 - May 15, 1980 as a Visiting Professor of Chemistry at the University of Texas, Austin at a salary of about $2,100 per month. Salary for previous employment was terminated September 15, 1978.

2. Have you received within the past 12 months any money from any of the following sources?

Business, profession or form of self-employment. No.

Rent payments, interest or dividends. Yes. $707.70 in interest. See 3. below.

Pensions, annuities or life insurance payments. No.

Gifts or inheritances. No.

Any other sources. Yes. Living and litigation expenses as dependent of wife.

3. Do you own any cash, or do you have money in a checking or savings account?

Yes. $6,000 interest in certificate of deposit held by father, in effect unsecured loan to father. Presently about $200 above regular monthly expenses in a joint checking account. See Additional Statement below.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes. Eighty acres of land with log cabin in rural area near Poplarville, Mississippi. Purchase value of $40,000, market value of (?) $60,000, representing inheritance of wife. Jointly owned.

1975 Volvo, 4-cyldr., 167,000 miles; required for litigation activities, full time, of pro se Appellant.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

None. In fact am dependent of wife, who has no other dependents.

Additional Statement:

Documented cash expenses for carrying on pro se litigation that were reported to IRS are $3,900 for the 1980 tax year, $2,724 for the 1981 tax year, $3,535 for the 1982 tax year.

The wife of Appellant was first employed since about October, 1979 at $8,500 per year; since July 1981 at $16,400 plus $2,000 car allowance; since January, 1983 at $17,900 plus $2,500 car allowance. In addition wife receives $1,800 per year rent on Poplarville cabin which, in 1982, required $700 insurance,$630 repairs and maintenance, and $220 taxes. She owns valuable property of perhaps $1,500 in diamond ring jewelry and about $8,000 checking/savings account representing her inheritances since residing in the State of Pennsylvania.

Dated this 15 day of July, 1983 in Macungie, Pennsylvania

Oscar E. Weigang, Jr., Appellant pro se

AFFIDAVIT OF SERVICE

I hereby swear under penalty of perjury that on July 18, 1983 I served by mail with first-class postage prepaid a single copy of the foregoing Motion to Proceed In Forma Pauperis on each of the following, who are all who are required to be served:

Jeffrey T. Edwards, Esq.
Preti, Flaherty & Beliveau
443 Congress Street
Portland, ME 04101

The Attorney General
Susan P. Herman, Asst. Attorney General
State House Station 6
Augusta, ME 04333

John W. Ballou, Esq.
Mitchell & Stearns
One Merchants Plaza
Bangor, ME 04401-0702

John M. R. Paterson, Esq.
Bernstein, Shur, Sawyer & Nelson
One Monument Square
Portland, ME 04101

Julio DeSanctis III, Esq.
Hall, DeSanctis & Schultz
20 Central Street
Bangor, ME 04401

Phillip D. Buckley, Esq.
Bruce C. Mallonee, Esq.
Rudman & Winchell
P. O. Box 1401
Bangor, ME 04401

Francis C. Marsano, Esq.
Eaton, Glass, Marsano & Woodward
P. O. Box 404
Belfast, ME 04915

Harold M. Hagopian
Box 81
Monroe, ME 04951

Oscar E. Weigang, Jr.

Oscar E. Weigang, Jr., Appellant pro se

Dated July 18, 1983